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Reutter's The Law of Public Education

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REUTTER'S THE LAW OF PUBLIC EDUCATION

EIGHTH EDITION

by

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CHAPTER 1

LEGAL FRAMEWORK FOR PUBLIC EDUCATION

INTRODUCTION

Public school boards in the United States, which are arms of their states, have the duty to prepare children to become productive members of society.¹ Before discussing the legal issues arising in public elementary and secondary schools, it is important to acknowledge the large and ever-growing body of law directing the actions of educational officials. It is also worth noting that Education (or School) Law, as this area of study is known, is but one part of a larger body of law dealing with governmental operations influencing the daily responsibilities of educators. This chapter begins with a brief discussion of the common law, examines the sources and types of laws in the American legal system, and reviews how they impact daily school operations.

THE COMMON LAW

In medieval England, legal scholars and practitioners devoted a great deal of time and attention to “discovering” the law, based on the notion that the laws of nature were available to deal with problems if only they could be found.² As the modern study of law emerged, lawyers and academics analyzed judicial decisions in order to uncover the widely held view of the natural law. Contemporaneously, professional communities in London, the Inns of Court, which Winston Churchill described as “half colleges, half law schools . . . produced annual law reports or Year Books”³ that judges began to treat as authoritative. In this way, common law, also referred to as judge made law, the basis for precedent, which was “discovered” as a result of litigation, stood in contrast to the enacted laws or statutes in England.⁴

1. For a history of urban education, with a focus on the “one best system” for educating all children, see DAVID B. TAYAK, *THE ONE BEST SYSTEM: A HISTORY OF URBAN AMERICAN EDUCATION* (1974).

2. BLACKSTONE’S COMMENTARIES (circa 1760) embraced this belief; the Declaration of Independence shares this approach.

3. 1 WINSTON S. CHURCHILL, *HISTORY OF THE ENGLISH SPEAKING PEOPLES 176–177* (1956).

4. England still does not have a written constitution.

The legal system in the United States, sometimes referred to as the Anglo–American system of jurisprudence, evolved out of English common law. As customs became accepted bases of conduct, they were distilled into principles that courts enunciated in specific cases. These judicial pronouncements formed English and, later, American common law.

Insofar as courts tended to follow their earlier decisions, the doctrine of *stare decisis*, literally, “to abide by,” also referred to as precedent or *res judicata*, literally, “a matter judged,” emerged. *Stare decisis* stands for the proposition that once a court has resolved an issue, the question is ordinarily not revisited. However, as a flexible principle, *stare decisis* permits the judiciary to revisit issues such as where the Supreme Court’s opinion in *Brown v. Board of Education (Brown)*⁵ repudiated the pernicious doctrine of “separate but equal” from *Plessy v. Ferguson*,⁶ a case involving accommodations in public railway cars, and explicitly extended to schools in *Gong Lum v. Rice*.⁷ By relying on precedent, which stands for the proposition that a majority ruling of the highest court in a jurisdiction is binding on all lower courts in that jurisdiction, judges instilled a degree of certainty in legal proceedings. In other words, by basing their judgments on the collected wisdom of earlier cases, judges did not have to “re-invent the wheel” whenever new, or seemingly new, legal issues arose. Rather, by applying precedent, judges can turn to older judicial opinions in resolving disputes, thereby granting parties a measure of predictability in evaluating the outcome of their cases.

As noted, most of American law is heavily indebted to the common law. Among the many areas in civil law that evolved from common law are the rights and duties of parents in caring for their children; the authority of school officials to act *in loco parentis*, literally, “in place of the parents,” when dealing with students; the elements of contracts; the essentials of torts; the principles of land ownership; and a myriad of other legal concepts. Accordingly, the fundamental principles governing many aspects relating to the daily operation of public schools are not the result of statutory or constitutional provisions but exist by virtue of the common law.

CIVIL LAW

It is important to keep in mind that while the primary focus of Education Law in general, and this book in particular, is civil law, it is helpful for readers to get a better understanding of the nature of civil law.⁸ In discussing civil law, it is useful to examine it in contrast to what it is not, criminal law, even though criminal law is beyond the scope of this book.

5. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). [Case No. 116]

6. 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

7. 275 U.S. 78, 48 S.Ct. 91, 72 L.Ed. 172 (1927).

8. Unless otherwise noted, the book focuses exclusively on civil law.

Civil law and criminal law differ in three significant ways. The first difference between civil law and criminal law deals with the parties. As reflected by the vast majority of cases in this book, in disputes involving civil law the parties are ordinarily private individuals exclusively or private individuals and the state, in and through state or local school boards or other educational agencies, or their employees as arms of the government, in disagreements over civil law. In this context, civil law is defined as disputes that are not criminal in nature. On the other hand, in cases involving criminal law, the state brings its weight to bear against individuals who violated criminal statutes. Unlike civil law, which is a combination of common law and statute, whether an act is criminal is defined exclusively by statute since there is no such thing as a common law criminal violation.

The second difference between civil law and criminal law is the measure of damages. In civil law, the measure of damages, or relief sought, can be legal and/or equitable. Legal damages, which seek restitution, typically money to put individuals in the positions that they would have been but for the damages they experienced, most commonly appear in cases dealing with negligence, breaches of contracts, and/or employment disputes involving requests for back pay and benefits. Equitable damages, which are far more commonly sought in disputes dealing with Education Law, usually involve requests for judicial orders, or writs of mandamus, directing public officials to do something such as end segregated public schooling, provide an appropriate education for children with disabilities, or stop limiting student rights to free speech. In addition, particularly in employment situations, plaintiffs can seek both legal and equitable relief.⁹ In cases involving criminal law, the penalties are most commonly incarceration or fines for wrongdoing.

The final difference between civil law and criminal law is the burden of proof. In civil cases, the plaintiffs, or parties initiating the litigation, must prove that defendants are liable by a preponderance of the evidence. This means that ordinarily plaintiffs must provide evidence that is accorded greater weight than that presented by defendants. As described by the Supreme Court of Iowa, “[a] preponderance of the evidence is the evidence ‘that is more convincing than opposing evidence’ or ‘more likely true than not true.’ It is evidence superior in weight, influence, or force.”¹⁰ Further, in some civil cases, where experience demonstrates the need for greater certainty, courts may rely on the intermediate standard of “clear and convincing evidence,” which is more than a preponderance but less than beyond a reasonable doubt; this applies in such admittedly non-education

⁹. Of course, when individuals have been harmed by the criminal acts of others, they may also have suffered civil losses in connection with obtaining medical care and missing work. When plaintiffs have incurred such losses, they can file civil suits after the state has proceeded with criminal charges. It is better for injured parties to pursue civil remedies after the completion of criminal litigation because if defendants are adjudged guilty criminally, then plaintiffs can ordinarily proceed directly to the damages stage since the higher burden of proof in criminal cases is conclusive proof of civil liability. Conversely, plaintiffs cannot rely on not guilty verdicts in civil proceedings just as findings of liability are inadmissible in criminal court due to the different burdens of proof.

¹⁰. *Martinek v. Belmond-Klemme Community School Dist.*, 772 N.W.2d 758 [249 Educ. L. Rep. 390] (Iowa 2009), *reh'g denied* (2009). (internal citations omitted) [Case No. 77]

types of disputes as those seeking to have individuals declared as mentally incompetent and patent law. Conversely, in criminal cases, in order for states to establish that individuals who are accused of crimes are guilty, they must meet the “beyond a reasonable doubt” standard of proof.

THE FEDERAL CONSTITUTION

Simply stated, the United States Constitution is the law of the land. Put another way, all federal statutes and regulations, state constitutions, state laws and regulations, ordinances of local governmental units, and school board rules are subject to the Constitution as interpreted by the Supreme Court and other judicial bodies. In addition to serving as the source of American law, the Constitution creates three co-equal branches of the federal government, each of which is discussed further in the following sections.

Article I of the United States Constitution identifies Congress as the legislative body charged with the responsibility of “making” law. Article II explains the role of the President, the chief executive, who exercises the authority to enforce the laws passed by Congress, chiefly through regulations promulgated by various federal departments and agencies. Article III describes the powers of the courts, which are responsible for interpreting the law. As a democratic republic, state constitutions in the United States, which are supreme in their own jurisdictions as long as they do not vary from or contradict the Federal Constitution, create governmental systems reflecting the structure of the federal government and operate in essentially the same manner as their federal counterparts.

In identifying the duties of the federal government, and distinguishing those from the responsibilities of state governments, four types of powers can be delineated in the United States Constitution: enumerated, implied, reserved, and concurrent. Article I, Section 8, contains the enumerated powers that only the federal government can exercise;¹¹ among these powers are “to provide for the common Defence [sic] and general welfare of the United States . . . [t]o regulate Commerce with foreign Nations, and among the several States . . . [t]o coin Money, and regulate the value thereof . . . [t]o promote Post Offices . . . , [and] [t]o constitute Tribunals inferior to the Supreme Court.”

Over time, the second set of powers, implied powers, those reasonably necessary to effectuate the express authority of the federal government, emerged. For example, in providing for minting of coins and other currency, the federal government has the implied authority to create the Department of Treasury and such bureaucracies as it deems necessary to exercise this responsibility.

11. See THE FEDERALIST No. 45 at 292 (James Madison) (Clinton Rossiter ed., 1961). “The powers delegated by the proposed Constitution to the federal government are few and defined.”

As discussed below under the Tenth Amendment, the third set of powers, reserved, are those not delegated to the United States by the Constitution nor prohibited by it to the States or to the people. From the perspective of the study of Education Law, the most important reserved power is education because despite its coverage of a wide area of powers, duties, and limitations, the Constitution is silent with regard to education, thereby rendering it a responsibility of individual states. The earliest federal enactment addressing schooling is the Northwest Ordinance of 1787, which encouraged the creation of schools as the means of education.¹²

The final type of power, concurrent, is shared by both the federal and state governments. The most noteworthy example of a concurrent power is taxation, insofar as both levels of government can tax residents.

School-related litigation generally involves relatively few sections of the Constitution. The amendments protecting individual rights are the sections of the Constitution impacting most dramatically on schools. The restrictions on Congressional power and the States that most frequently come before the courts are Article I, Sections 8 and 10, as well as the First, Fourth, Fifth, and Fourteenth Amendments.

One key provision of Article I, Section 8, is the Commerce Clause, which the Supreme Court has applied with interesting results. For example, in *Katzenbach v. McClung*,¹³ a non-school case, the Court broadly interpreted Congressional authority under the Civil Rights Act of 1964 in helping to eliminate racial discrimination in restaurants. After generally deferring to Congressional authority pursuant to the Commerce Clause since 1937,¹⁴ for the first time in almost sixty years, in *United States v. Lopez*,¹⁵ the Court struck down a federal law, the Gun-Free School Zones Act, on the basis that Congress exceeded its authority in relying on the Commerce Clause in attempting to limit the flow of guns into public schools. Five years later, in *United States v. Morrison*,¹⁶ albeit set in higher education, the Court again struck down a federal law, the Violence Against Women Act, after a student was viciously raped by three members of her university's football team, on the ground that it did not involve interstate commerce. In a telling comment on the relationship between the Court and Congress reflecting part of the difference between members of the Court who are strict constructionists and those who engage in judicial activism, a topic that is discussed a bit more below, Chief Justice Rehnquist's majority opinion observed that "[d]ue respect for the decisions of a coordinate

12. According to Article 3 of the Northwest Ordinance, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." SOUL OF AMERICA: DOCUMENTING OUR PAST, VOL. I: 1492-1870 at 86 (Robert C. Baron ed., 1994).

13. 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964).

14. Starting with *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), the Court afforded Congress considerably greater latitude in regulating conduct and transactions under the Commerce Clause than under its earlier case law.

15. 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 [99 Educ. L. Rep. 24] (1995).

16. 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 [144 Educ. L. Rep. 28] (2000). The Court explained that "[g]lender-motivated crimes of violence are not, in any sense of the phrase, economic activity. . . . We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct. . . ." *Id.* at 613.

branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.”¹⁷

CONTRACTS CLAUSE

Early in American history, political leaders recognized the importance of preserving the integrity of contracts. The Framers of the Constitution realized that unless contractual agreements could be relied on without possible subsequent modifications or abrogation by state laws, the national economy could neither progress nor develop. To this end, Article I, Section 10 provides in part that “no State shall . . . pass any . . . law impairing the obligation of contracts.”

Article I, Section 10 is involved when state legislatures seek to change teachers’ tenure rights, salaries, or retirement benefits to the possible detriment of individuals who acquired vested status under the law. In analyzing legal disputes of this type, one of the important considerations that courts must take into account is whether relationships between public school officials and educators are contractual. If relationships are contractual, such as under collective bargaining agreements, then school boards or state officials may not make changes without the risk of having violated Article I, Section 10 of the Constitution.

SPENDING CLAUSE

As noted below, Congress retains the authority to enact laws under the general welfare clause of Article I, Section 8¹⁸ by offering funds for purposes that it deems to serve the public good, including education. If states accept federal funds, they are bound by whatever conditions Congress has attached to the legislation. If challenged, federal courts must be satisfied that conditions pass constitutional musters. In 1987, Congress expanded its authority by defining a “program or activity” as encompassing “all of the operations of [an entity] any part of which is extended Federal financial assistance.”¹⁹ This broad general prohibition covers “race, color or national origin,”²⁰ “sex,”²¹ and “otherwise qualified handicapped individuals,”²² categories of increasing importance in schools.

17. *Id.* at 607.

18. According to this section, “The Congress shall have Power to . . . provide for . . . [the] general welfare of the United States.”

19. Civil Rights Restoration Act, 20 U.S.C.A. § 1687.

20. 42 U.S.C.A. § 2000d [known as Title VI, its designation in the Civil Rights Act of 1964]. This statute is in the Appendix.

21. 20 U.S.C.A. § 1681 [known as Title IX, its designation in the Education Amendments of 1972]. Key provisions from this statute are in the Appendix.

22. 29 U.S.C.A. § 794 [known as Section 504, its designation in the Rehabilitation Act of 1973]. This statute is in the Appendix.

THE BILL OF RIGHTS

In the process leading to the ratification of the Federal Constitution in 1789, thereby replacing the ineffective Articles of Confederation, some of the Framers feared that they may have created a federal government that, unless its powers were restricted, might have ignored the civil rights of individual citizens. In order to offer a counterbalance to the authority of the federal government, and help with the ratification of the Constitution, its Framers proposed ten amendments, comprising the Bill of Rights that served to guarantee personal rights.

The Bill of Rights was ratified and added to the United States Constitution in 1791. The process for amending the Constitution is in Article V. The following discussion highlights the amendments that are most relevant for education.

First Amendment

The First Amendment was adopted to ensure personal freedoms or civil rights in declaring that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Both religion clauses of the First Amendment, dealing with the establishment and free exercise of religion, have been subject to vast amounts of litigation. While the First Amendment relates solely to Congress, the Supreme Court extended its protection to the States through its interpretation of the Fourteenth Amendment.²³ As discussed primarily in Chapter 2, these clauses have been involved in two categories of cases involving schools: those overseeing the use of public funds to aid students in religiously affiliated non-public schools and those concerning a wide array of prayer and/or religious activities in public schools.

Parties in educational disputes regularly invoked the First Amendment’s freedom of speech clause since the 1960s. Most of the litigation over the free speech rights of students and teachers substantively involved expression, whether spoken, written, or symbolic. On the other hand, the amount of litigation devoted to the rights of assembly and petition and the derivative right of association in connection with employee organizations such as unions to engage in concerted actions designed to influence educational policies, especially those affecting working conditions, has decreased in recent years.

Fourth Amendment

The Fourth Amendment forbids unreasonable searches and seizures, asserting that warrants “describing the place to be searched, and the persons or things to be seized” can be issued only “upon probable cause,” a

²³. *Cantwell v. State of Conn.*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). But see *Barron v. Mayor and City Council of Baltimore*, 32 U.S. 243, 8 L.Ed. 672 (1833) (holding that the Bill of Rights was inapplicable to the states because its history indicated that it was limited in force to the federal government).

high standard that ordinarily applies in criminal, rather than civil, cases. The Fourth Amendment has been contested in well over three hundred school cases since the Court first applied it in an educational setting in *New Jersey v. T.L.O.*²⁴ Additionally, the Fourth Amendment is sometimes mentioned in connection with the right of privacy, a concept that is also associated with the notion of liberty in the Fourteenth Amendment.

Tenth Amendment

Since education is not mentioned in the Constitution, it is a function of the States under the Tenth Amendment: “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Constitution’s silence with regard to education should not be interpreted as meaning that it does not affect schooling. Beginning largely with *Brown*, the Supreme Court, soon to be followed by lower federal courts, acknowledged that constitutional rights, such as equal protection under the Fourteenth Amendment, have a major impact on schooling. Consequently, as the courts and Congress have taken a more active role in education, the number of cases involving federal Constitutional issues, particularly under the Fourteenth Amendment, and statutory questions increased dramatically since *Brown*.

Eleventh Amendment

The Eleventh Amendment reads that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

The adoption of the Constitution “did not disturb States’ immunity from private suits, thus firmly enshrining this principle in our constitutional framework”²⁵ The widespread acceptance of the proposition “that the Constitution would not strip the States of sovereign immunity”²⁶ can be seen in the reaction to *Chisholm v. Georgia (Chisholm)*,²⁷ wherein the Supreme Court held that private citizens from one State could sue another State.²⁸ Almost immediately, Congress passed, and the States ratified, the Eleventh Amendment, effectively overturning *Chisholm* and restoring a concept derived in part from the common-law tradition coupled with constitutional design.

The Eleventh Amendment’s being facially limited to the “provisions of the Constitution that raised concerns during the ratification debates and

24. 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 [21 Educ. L. Rep. 1122] (1985). [Case No. 96]

25. *Federal Maritime Comm’n v. South Carolina State Ports Auth.*, 535 U.S. 743, 752, 122 S.Ct. 1864, 152 L.Ed.2d 962 (2002).

26. *Alden v. Maine*, 527 U.S. 706, 716, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999).

27. 2 U.S. 419, 2 Dall. 419, 1 L.Ed. 440 (1793).

28. The Court explicitly acknowledged that *Chisholm* was wrong. See *Federal Maritime Comm’n*, 535 U.S. at 752–53; *Alden*, 527 U.S. at 721–22.

... *Chisholm* ...”²⁹ aside, it confirms the broader notion that States are immune from suit. The Eleventh Amendment also bars suits against a variety of entities, including corporations created by the federal government,³⁰ and applies in such important venues for education as state courts³¹ and federal administrative proceedings.³²

As broad as sovereign immunity is, it is not absolute since it permits five exceptions. First, under extraordinary circumstances, Congress may abrogate the sovereign immunity of States³³ but must do so explicitly.³⁴ Second, States may waive their sovereign immunity.³⁵ Third, by invoking the jurisdiction of the federal courts, States expose themselves to the equivalent of compulsory counterclaims that do not exceed the amounts or differ in kind from the relief they seek.³⁶ Fourth, federal courts generally may order state officials, in their official capacities, to conform their conduct to federal law.³⁷ Finally, “States, in ratifying the Constitution, did surrender a portion of their inherent immunity by consenting to suits brought by sister States or by the Federal Government.”³⁸

Fourteenth and Fifth Amendments

According to Section 1 of the Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

29. *Alden v. Maine*, 527 U.S. 706, 723, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999).

30. *Smith v. Reeves*, 178 U.S. 436, 20 S.Ct. 919, 44 L.Ed. 1140 (1900).

31. *Alden v. Maine*, 527 U.S. 706, 712, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999).

32. *Federal Maritime Comm’n v. South Carolina State Ports Auth.*, 535 U.S. 743, 760, 122 S.Ct. 1864, 152 L.Ed.2d 962 (2002).

33. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976). *But see Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) (affirming that Congress lacked authority under the Indian Commerce Clause to abrogate the States’ Eleventh Amendment immunity).

34. *Dellmuth v. Muth*, 491 U.S. 223, 109 S.Ct. 2397, 105 L.Ed.2d 181 [53 Educ. L. Rep. 792] (1989) (noting that insofar as Congress can abrogate States’ immunity only by making its intention unmistakably clear in a statute’s language, it did not do so under the then Education for All Handicapped Children’s Act, now the Individuals with Disabilities Education Act). However, Congress essentially overturned this decision in the statute. *See* 20 U.S.C.A. § 1403(a): “A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter.”

35. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 119 S.Ct. 2219, 144 L.Ed.2d 605 [135 Educ. L. Rep. 362] (1999).

36. *See, e.g., Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991).

37. *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 124 S.Ct. 899, 157 L.Ed.2d 855 (2004).

38. *Federal Maritime Comm’n v. South Carolina State Ports Auth.*, 535 U.S. 743, 752, 122 S.Ct. 1864, 152 L.Ed.2d 962 (2002).

The first clause of Section 1 of the Fourteenth Amendment defines citizenship, specifying privileges shared by citizens of the United States and other persons. The last two clauses of Section 1 have widespread applicability to public education. The next-to-last clause in Section 1, the Due Process Clause, has perhaps been applied more frequently than any other provision of the Constitution with regard to schooling. The final clause, the Equal Protection Clause, has also received wide attention in educational disputes.

Enacted in 1868, the Fourteenth Amendment applies to the States. The Fifth Amendment pursuant to which, in part, “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law . . .” applies to the federal government. The Supreme Court recognized the difference between the Fifth and Fourteenth Amendments when, on the same day that it struck down segregated schooling in *Brown* under the Equal Protection Clause of the Fourteenth Amendment, it relied on the Due Process Clause of the Fifth Amendment in invalidating the practice in *Bolling v. Sharpe* (*Bolling*),³⁹ a dispute which originated in Washington, D.C. The Court applied the Fifth, rather than the Fourteenth, Amendment in *Bolling* since public schools in Washington, D.C., are under the control of Congress and hence the federal government.

Due process includes a pair of distinct aspects that may be viewed as the two sides of a coin. Substantive due process addresses the rights of Americans whether under the Constitution or specific legislative or regulatory enactments. Under this concept, laws must have both purposes within the legitimate power of government and be rationally related to achieving those goals. In other words, as reflected in the ensuing discussion of equal protection, substantive due process protects individuals against grossly unfair acts of government. Procedural due process concerns the decision-making process applicable in evaluating whether public officials violated the law. Pursuant to this provision, those purporting to implement laws must apply basic fairness. More specifically, individuals who may suffer deprivations must be informed of what they are accused and must be offered the opportunity to defend their actions before fair and impartial third-party decision makers.

Individuals who have substantive due process rights, such as tenured teachers, are entitled to procedural due process. Conversely, individuals, such as non-tenured teachers, who lack substantive due process rights are not entitled to procedural due process unless it is conferred on them by collective bargaining contracts or state law.

At the heart of equal protection is the notion that individuals or groups that “are similarly situated should be treated alike.”⁴⁰ Put another way, all within a classification must be accorded the same rights and privileges while being subjected to the same duties. Per se classifications are subject to closer examination, must be based on differences relevant to the subject, and cannot be prohibited by law.

39. 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). [Case No. 116]

40. *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).

Under equal protection analysis, the general constitutional test for acceptability of criteria for classifications is whether they are rationally related to legitimate governmental purposes.⁴¹ There is a very strong, but rebuttable, presumption that criteria established through the legislative process are constitutional.⁴² It is difficult for plaintiffs to succeed if courts apply this test.

At the other end of the continuum, when legislation or acts of governmental officials or bodies allegedly infringe on fundamental rights (such as those mentioned explicitly in the United States Constitution including freedom of religion or speech or that are implicitly there as declared by the Supreme Court), or disadvantage members of suspect classes by categorizing individuals based on constitutionally “suspect” factors such as race or legislatively protected categories (such as age in some situations), the courts apply the “strict scrutiny” test and are unlikely to uphold classifications unless they are based on compelling justifications.⁴³ Suspect classes are clearly defined groups in need of extraordinary protection from the majoritarian political process since they have been subjected purposefully to unequal treatment or are relegated to positions of virtual political powerlessness. Under strict scrutiny analysis, the burden shifts to the government to demonstrate a compelling need for such classifications. Even if restrictions are permissible, they must be as narrowly drawn as possible. When courts apply the so-called compelling interest test, governmental classifications or actions are likely to fail.

Classifications such as illegitimacy and gender fall into a third, in-between, category and continue to be subject to heightened judicial scrutiny. In limited circumstances, the Supreme Court adopted an intermediate standard of review that is not as difficult for the government to meet as the compelling interest test but which involves less deference to legislation than the rational relations test. Under this test, the Court refuses to uphold classifications unless they bear “substantial relationships” to “important” governmental interests.⁴⁴

As noted, the Supreme Court interpreted the First Amendment, for example, as applying to the States through the Fourteenth Amendment.⁴⁵

41. The Supreme Court declared that “. . . if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct. 1620, 134 L.Ed.2d 855 [109 Educ. L. Rep. 539] (1996).

42. See *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 273, 108 S.Ct. 562, 98 L.Ed.2d 592 [43 Educ. L. Rep. 515] (1988) [Case No. 105] “. . . [w]e hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

43. For a notorious example of a case wherein the Supreme Court allowed a race-based classification to survive strict scrutiny, see *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944) (upholding the internment of Japanese-Americans during World War II based on their ancestry).

44. The case that comes closest to applying this standard in a school setting was *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 [4 Educ. L. Rep. 953] (1982), *reh'g denied*, 458 U.S. 1131, 103 S.Ct. 14, 73 L.Ed.2d 1401 (1982), even though the majority did not clearly indicate that it was applying this test. [Case No. 82]

45. See *Cantwell v. State of Conn.*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940).

As a result, restrictions under the First and Fourteenth Amendments must be considered along with limits on state constitutions when examining the validity of state laws or local school board policies. In a specific example on the interplay between constitutional provisions dealing with the funding of non-public schools, a major area of controversy, courts must consider both the First and Fourteenth Amendments. In *Everson v. Board of Education*,⁴⁶ the plaintiff unsuccessfully raised the Fourteenth Amendment's prohibition against using public funds for private purposes. The Court pointed out that the First Amendment's bar is against using public funds for religious purposes, a subcategory of private purposes.⁴⁷ The Court has applied the Fourteenth Amendment in a wide range of educational disputes such as those dealing with the rights of parents to direct the education of their children,⁴⁸ teachers who are subject to dismissal,⁴⁹ student discipline,⁵⁰ and racial segregation.⁵¹

FEDERAL STATUTES AND REGULATIONS

Pursuant to the Tenth Amendment, education is a constitutional power reserved to the States.⁵² Even so, Congress retains the authority to enact laws under the General Welfare Clause of Article I, Section 8,⁵³ by offering funds for purposes that it deems to serve the public good. Beginning in the 1960s, Congress enacted a series of statutes such as the Civil Rights Act of 1964⁵⁴ which subject public school systems to its anti-

46. *Everson v. Board of Educ.*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), *reh'g denied*, 330 U.S. 855, 67 S.Ct. 962, 91 L.Ed. 1297 (1947). [Case No. 1]

47. See the discussion of *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) and its progeny in Chapter 2. [Case No. 6]

48. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

49. See, e.g., *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 [23 Educ. L. Rep. 473] (1985), *on remand*, 763 F.2d 202 [25 Educ. L. Rep. 158] (6th Cir.1985), *on remand*, 651 F.Supp. 92 [37 Educ. L. Rep. 502] (N.D. Ohio 1986), *aff'd*, 844 F.2d 304 [46 Educ. L. Rep. 523] (6th Cir.1988), *cert. denied*, 488 U.S. 941, 109 S.Ct. 363, 102 L.Ed.2d 353 (1988), *cert. denied*, 488 U.S. 946, 109 S.Ct. 377, 102 L.Ed.2d 365 [50 Educ. L. Rep. 15] (1988). [Case No. 75]

50. See, e.g., *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). [Case No. 94]

51. See, e.g., *Brown v. Board of Educ.*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). [Case No. 116]

52. *Epperson v. State of Ark.*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968) [Case No. 6] (“By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, [t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’ (internal citations omitted.)”)

53. According to this section: “The Congress shall have Power to . . . provide for . . . [the] general welfare of the United States.”

54. 42 U.S.C.A. § 2000e-2a [popularly known as “Title VII,” its designation in the Civil Rights Act of 1964, made applicable to public schools in 1972]. Portions of this statute are in the Appendix.

discrimination in employment provisions that have had a profound effect on public education.⁵⁵

Many of the federal statutes with a direct and substantial impact on public education make federal funds available to state and local governments conditioned on their observing specified rules for the use of the money. By way of illustration, in order to receive funding for special education under the Individuals with Disabilities Education Act (IDEA),⁵⁶ states, in and through state and local educational agencies or school boards, must develop detailed procedures to identify children with disabilities and offer each qualified child a free appropriate public education in the least restrictive environment. Chapter 15 examines the IDEA in detail.

In another example of federal involvement in education, as part of the reauthorization of the Elementary and Secondary Education Act of 1965, in 2002 Congress enacted the No Child Left Behind Act (NCLB), perhaps the most controversial federal education statute ever.⁵⁷ Pursuant to the NCLB's far-ranging provisions, states that receive federal financial assistance must take steps to improve academic achievement among students who are economically disadvantaged; assist in preparing, training, and recruiting "highly qualified" teachers (and principals); provide improved language instruction for children of limited English proficiency; make school systems accountable for student achievement, particularly by imposing standards for adequate yearly progress for students and districts; require school systems to rely on teaching methods that are research based and that have been proven effective; and afford parents better choices while creating innovative educational programs, especially if local school systems are unresponsive to their needs. To date, federal trial courts have refused to allow parents and private service providers who are opposed to the NCLB's provisions⁵⁸ the right to file private rights of action.⁵⁹ Amid considerable controversy over its future as this book heads to press, elements of the NCLB are examined in Chapter 9, on teachers, and in Chapter 12 on curricular issues including accountability.

Courts have also responded to claims that the NCLB is an unfunded mandate. The federal trial court in Connecticut granted the United States Department of Education's (DOE) motion for summary judgment, essen-

55. Federal statutes, which consist of fifty titles, are published in the United States Code, abbreviated U.S.C. The unofficial version, the United States Code Annotated, published by Thomson-West, abbreviated U.S.C.A., includes useful annotations, or brief summaries of all cases that have cited federal statutes. In addition to WESTLAW and LEXIS, both of which are available by subscription, federal statutes can be found in a variety of on-line Web sites. *See, e.g.,* <http://www.gpoaccess.gov/uscode> (official Web site of the Government Printing Office); http://thomas.loc.gov/home/bills_res.html (official Web site of the Library of Congress).

56. 20 U.S.C.A. §§ 1400 *et seq.* *See* Chapter 14 for a full discussion of this far-reaching statute. Portions of this statute are in the Appendix.

57. 20 U.S.C.A. §§ 6301 *et seq.* Portions of this statute are in the Appendix.

58. The courts rejected claims by parents and private service providers, respectively. *See Association of Community Org. v. New York*, 269 F.Supp.2d 338 [179 Educ. L. Rep. 661] (S.D.N.Y. 2003); *Fresh Start Academy v. Toledo Bd. of Educ.*, 363 F.Supp.2d 910 [197 Educ. L. Rep. 275] (N.D. Ohio 2005).

59. *See, e.g., Blakely v. Wells*, 380 Fed.App'x 6, 8 [260 Educ. L. Rep. 605] (2d Cir. 2010), citing *Horn v. Flores*, 557 U.S. 433, ___, n. 6174, 129 S.Ct. 2579, 2598, n. 6, 174 L.Ed.2d 406 [245 Educ. L. Rep. 572] (2009) ("NCLB does not provide a private right of action"); *Watson v. Washington Twp. of Gloucester County Pub. School Dist.*, 413 Fed.Appx. 466 [267 Educ. L. Rep. 116] (3rd Cir. 2011).

tially dismissing the state's claim that the NCLB violated its own unfunded mandate provisions, the Spending Clause, and the Tenth Amendment.⁶⁰ The court later reached the same outcome as to the remainder of the claim which alleged that the DOE violated the Administrative Procedures Act (APA) in rejecting Connecticut's two proposed amendments over the timing and method of assessment of children who needed special education and were classified as Limited English Proficiency students.⁶¹ The court explained that although it refused to address the merits of the underlying NCLB claims, the DOE did not act arbitrarily or capriciously pursuant to the APA in rejecting the plans. Similarly, the Seventh Circuit affirmed the dismissal of a similar claim alleging that the NCLB and the IDEA are legally incompatible.⁶² The court determined that the statutes simply did not conflict with one another.

The Sixth Circuit initially reached the opposite result, holding that insofar as a school board and educational associations had standing, their suit against the DOE could proceed under the Spending Clause based on the claim that they need not meet the requirements of the NCLB since federal funding was insufficient to cover increased costs of compliance.⁶³ After an en banc panel⁶⁴ vacated its original order subject to a rehearing, an evenly divided court upheld the dismissal of claims that the NCLB was an unfunded mandate.⁶⁵ The First Circuit subsequently reached the same outcome in rejecting a claim that the NCLB was an unfunded mandate.⁶⁶

Regulations promulgated by the DOE and other agencies afford the executive branch the opportunity to enforce statutes by carrying out their full effect.⁶⁷ In other words, while statutes set broad legislative parameters with regard to such areas as compulsory attendance, regulations permit administrative agencies to fill in necessary details concerning the amount of time that children must be in class and the subject matter that they need to study in order to satisfy the law. Regulations are thus presumptively valid and must be treated like acts of Congress.

STATE CONSTITUTIONS

^{60.} *Connecticut v. Spellings*, 2007 WL 329118 (D. Conn. 2007). For the earlier ruling in this dispute, see *Connecticut v. Spellings*, 453 F.Supp.2d 459 [214 Educ. L. Rep. 186] (D. Conn.2006).

^{61.} *Connecticut v. Spellings*, 549 F.Supp.2d 161 [233 Educ. L. Rep. 209] (D.Conn.2008).

^{62.} *Board of Educ. of Ottawa Twp. High School Dist. 140 v. Spellings*, 517 F.3d 922 [230 Educ. L. Rep. 159] (7th Cir.2008).

^{63.} *School Dist. of the City of Pontiac v. Spellings*, 512 F.3d 252 [228 Educ. L. Rep. 651] (6th Cir.2008).

^{64.} An en banc panel, literally, "in the bench" is one consisting of all judges in a court or circuit.

^{65.} *School Dist. of City of Pontiac v. Secretary of the U.S. Dep't of Educ.*, 584 F.3d 253 [249 Educ. L. Rep. 654] (6th Cir. 2009), *cert. denied*, ___ U.S. ___, 130 S.Ct. 3385, 177 L.Ed.2d 302 (2010).

^{66.} *Connecticut v. Duncan*, 612 F.3d 107, 259 Educ. L. Rep. 18 (2d Cir. 2010), *cert. denied*, ___ U.S. ___, 131 S.Ct. 1471, 179 L.Ed.2d 360 (2011).

^{67.} Federal regulations are published in the Code of Federal Regulations, abbreviated C.F.R. In addition to WESTLAW and LEXIS, both of which are available by subscription, federal statutes can be found in a variety of on-line Web sites. See, e.g., <http://www.gpoaccess.gov/cfr/index.html> (official Web site of the Government Printing Office).

Subject to the supremacy of the United States Constitution and federal statutes, state constitutions form the basic law of individual states. The primary function of state constitutions is to restrict the powers of state legislatures, which have complete, or plenary, authority subject to federal law or state constitutions. State constitutions may require legislatures to perform specified acts, most notably for the purpose of this book such as establishing public educational systems and may forbid other acts such as using a state's credit to support private ventures.

State constitutions typically deal with many of the same matters as their federal counterpart, particularly in the areas of church-state relations and individual freedoms. Consistent with equal protection analysis, states may place more, but not fewer, limits on governmental relations whether with regard to religious bodies, teachers, and/or students than the Federal Constitution mandates.

Insofar as state constitutions are direct products of their people, no legislatures have sole power to amend state constitutions. Indeed, since legislatures are creatures of their constitutions, they lack the power to amend the constitutions that give them their existence. Procedures for amending state constitutions are found within their provisions. Normally, amending constitutions is a slow process due to the importance of deliberation before changes can be made in such fundamental legal documents.

STATE STATUTES AND REGULATIONS

State statutes are an abundant source of laws impacting public schools.⁶⁸ The courts consistently describe the power of state legislatures over their public school systems as plenary. This, of course, is true only in a relative sense. As discussed above, state legislatures are subject to the limitations of federal law and of state constitutions as they apply to education, just as is the case with legislation covering other agencies and segments of society. When agencies that are charged with the administration, or implementation, of statutory provisions act, their interpretations are generally accorded judicial deference unless they are clearly erroneous, fraudulent, in bad faith, an abuse of discretion, or arbitrary.⁶⁹

Public school systems, and many other governmental agencies, have become so complex that it is difficult to oversee their administration in detail through specific legislative enactments. The law is settled that state and local boards of education, administrators, and teachers have the authority to adopt and enforce reasonable rules and regulations to ensure the smooth operation and management of schools. As such, rules and

68. State statutes and regulations are published in state publications and on-line Web sites that appear under a variety of titles.

69. *Commonwealth, Dep't of Educ. v. Empowerment Bd. of Control of Chester-Upland School Dist.*, 938 A.2d 1000 [228 Educ. L. Rep. 793] (Pa.2007).

regulations are subject to the same constitutional limitations as statutes passed by legislative bodies. Moreover, it is possible that teachers who develop their own rules for classroom management can violate the civil rights of students. For example, if it is unconstitutional for Congress or state legislatures to enact laws violating the free speech rights of students, it is equally impermissible for teachers to do so by creating rules limited to their classrooms. Of course, nothing prohibits teachers from enacting rules that comply with the law. It is also important to note that legislation or rule-making on any level cannot conflict with higher authorities. For instance, local school boards cannot require parents and/or students to pay fees for tuition if state law prohibits the practice.⁷⁰

THE COURTS

IN GENERAL

Constitutional provisions, statutes, and regulations are not self-executing. Rather, they merely permit or require respective government agencies, including educational systems, to engage in or avoid specific actions. If individuals or bodies affected by provisions think that they are being improperly implemented, they may turn to the courts for relief. Since the judiciary cannot act on its own initiative, the courts can intervene only when parties initiate litigation, giving birth to a real case or controversy.

The duty of the courts is to interpret the law. Absent statutory guidance, or if regulations are unclear, courts apply common law. Since common law is a judicial creation, the courts may adjust it to changing circumstances. Where statutes are at issue, the task of the courts is to uncover, as far as possible, the intent of the legislative bodies that enacted the laws. In many cases, courts must try to impute to the legislature intent that they believe lawmakers would have had if the matter had been called to their attention. In reaching their judgments, the courts cannot avoid taking economic, political, social, educational, and perhaps other implications of the cases before them into consideration.

The role of judges and their latitude in interpreting constitutions, statutes, and regulations has caused a great deal of controversy. Two schools of thought have emerged in this regard. On the one hand are those who maintain that judges should stay close to the original texts by interpreting them consistent with the intent of those who wrote them, thereby engaging in judicial restraint. On the other hand are those who believe that judges are free to interpret the law based on their own beliefs, thereby engaging in judicial activism.⁷¹ Not surprisingly, this debate often plays itself out in legal battles involving education.

70. *Nagy v. Evansville-Vanderburgh School Corp.*, 844 N.E.2d 481 [207 Educ. L. Rep. 311] (Ind.2006) (striking down a mandatory student services fee), *on subsequent appeal*, 870 N.E.2d 12 [221 Educ. L. Rep. 845] (Ind.Ct.App.2007) (reversing the denial of the parents' request for attorney fees), *transfer denied*, 891 N.E.2d 35 (Ind.2008). [Case No. 89]

71. The first section in Chapter 2 includes a brief discussion of original intent with regard to religion.

As with the rest of the legal system, the American judiciary operates at both the federal and state levels. The most common judicial feature is a three-tiered system with trial courts, intermediate appellate courts, and courts of last resort, most commonly named supreme courts.

FEDERAL COURTS

According to Article III, Section 1 of the United States Constitution, “[t]he judicial Power of the United States, shall be vested in one supreme [sic] Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Federal litigation typically begins in trial courts, properly known as United States District Courts, before possibly proceeding to Circuit Courts of Appeal and the Supreme Court.

Congress can create federal jurisdiction as it sees fit. Plaintiffs ordinarily have recourse to the federal courts when there are disagreements over provisions in the Federal Constitution, federal statutes, federal regulations, or when there is diversity of state residence between litigants.⁷²

Since the 1960s one provision has perhaps most profoundly affected public education, and other governmental functions, by serving as a basis for suits in federal courts. This statute, 42 U.S.C. section 1983, commonly known as section 1983 originated as the Civil Rights Act of 1871,⁷³ a law which was designed to provide a remedy for those whose federally protected civil rights, most notably freed slaves during Reconstruction, were violated. Insofar as plaintiffs can recover monetary awards and attorney fees⁷⁴ pursuant to section 1983, it offers protection to those whose civil rights have been violated by school officials. Under this far-reaching statute:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Under section 1983, students or educators who claim the deprivation of federal constitutional or statutory rights, based on the actions of school

72. In suits based on diversity,

“(a) . . . district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.” 28 U.S.C.A. § 1332.

73. The statute was originally known as section 1983 of the Klu Klux Klan Act of April 20, 1871, “An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.”

74. 42 U.S.C.A. § 1988.

officials or by operation of laws or regulations, can seek to invoke federal jurisdiction. This means that plaintiffs can have federal courts address the validity of laws or regulations while adjudicating complaints where federal jurisdiction might otherwise have been difficult to establish. Even so, section 1983 does not require federal courts to resolve all suits in which parties allege that they suffered from unconstitutional deprivations since federal constitutional or statutory questions must exist in substance, not in mere allegations or hypothetical questions.

Federal District Courts

Federal trial courts of general jurisdiction have few limits on the types of cases that they may hear.⁷⁵ Each state contains at least one federal trial court for a total of eighty-nine federal districts in the fifty states; by including the courts in Puerto Rico, the Virgin Islands, the District of Columbia, Guam, and the Northern Mariana Islands, the number of federal trial courts increases to ninety-four.⁷⁶ In special circumstances, if parties sought to enjoin the enforcement of state statutes on the ground that they violated the Federal Constitution,⁷⁷ disputes were resolved by special panels composed of three federal district court judges⁷⁸ that could have been appealed directly to the Supreme Court.⁷⁹

Federal Circuit Courts

For appeals in the federal judicial system, the United States is divided into eleven numbered federal circuit courts of appeal, commonly referred to as circuit courts, plus the District of Columbia Circuit.⁸⁰ A thirteenth court,

⁷⁵ Published opinions of federal trial courts can be found in the Federal Supplement, abbreviated F. Supp., now in its second series, F.Supp.2d. In addition to WESTLAW and LEXIS, federal cases can be found in a variety of on-line Web sites. See, e.g., www.uscourts.gov (official Web site of the federal judiciary); <http://www.supremecourtus.gov> (official Web site of the Supreme Court).

⁷⁶ The list of federal district courts is located at 28 U.S.C.A. §§ 81–131.

⁷⁷ 28 U.S.C.A. § 1253.

⁷⁸ Such a three member panel was involved in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). [Case No. 94]

⁷⁹ Chief Justice John Roberts *2011 Year-End Report on the Federal Judiciary* revealed that

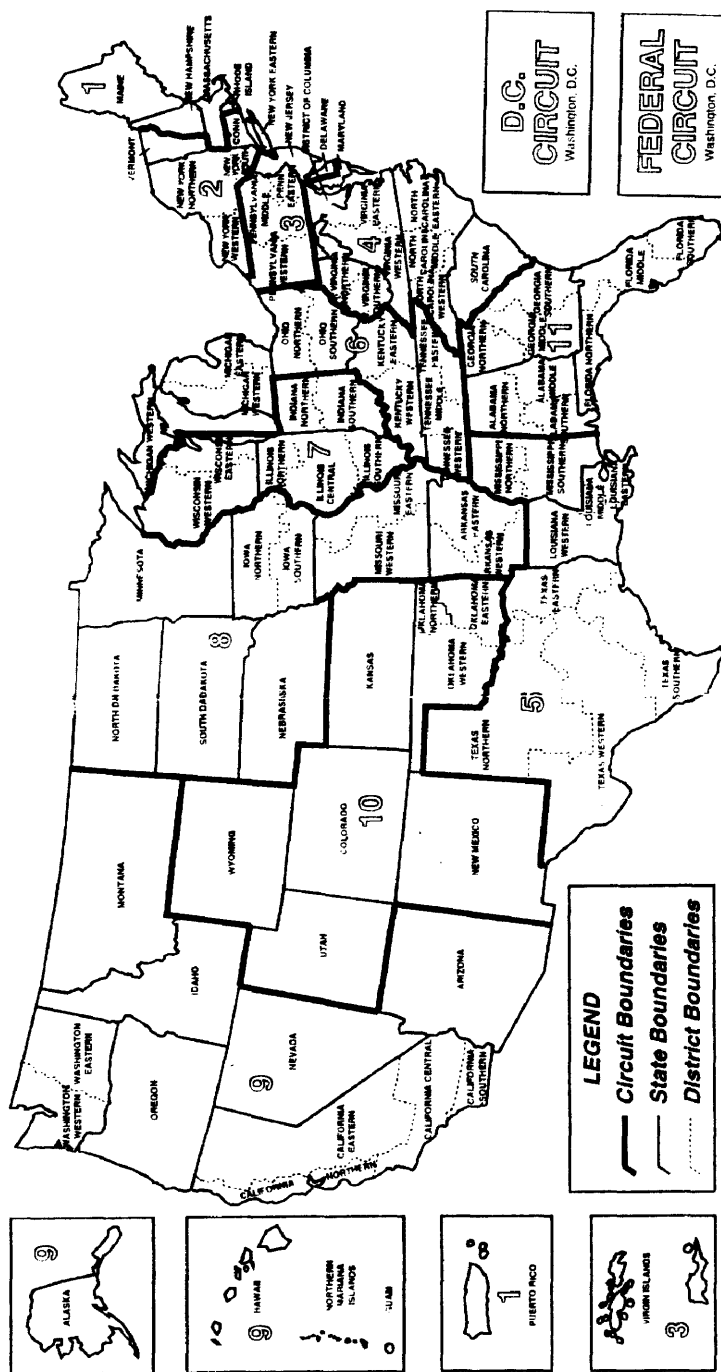
“[t]otal case filings in the district courts grew 2% to 367,692.”

<http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> at 13.

The Report also specified that “[c]ivil filings in the U.S. district courts grew 2% to 289,252 cases. Fueling this growth was a 2% increase in federal question cases (i.e., actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case), which resulted mainly from cases addressing civil rights, consumer credit, and intellectual property rights. Cases filed with the United States as a party climbed 9% Although criminal case filings (including transfers) remained stable (up by 12 cases to 78,440), the number of criminal defendants increased 3% to set a new record of 102,931.”

<http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> at 14.

⁸⁰ Published opinions of federal circuit courts appear in the Federal Reporter, abbreviated F., now in its third series, F.3d. Cases not selected for publication in F.3d are included in the Federal Appendix, abbreviated Fed.Appx. Cases in the Fed.Appx. are of limited precedential value.



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the Federal Circuit, has appellate jurisdiction over patents, federal governmental contracts, federal merit system protection, trademarks, and international trade. (See map on page 19.)

Rulings of circuit courts, which are ordinarily heard by three-judge panels, are binding on federal trial courts in the states within their jurisdiction and persuasive elsewhere.⁸¹ Under special circumstances, all judges in a circuit review cases in en banc hearings.⁸² Appeals from circuit courts go to the Supreme Court.⁸³

The Supreme Court

As noted, pursuant to Article III, Section 1 of the United States Constitution, “[t]he judicial Power of the United States, shall be vested in one supreme [sic] Court. . . .”⁸⁴ Yet, it was not until *Marbury v. Madison*⁸⁵ that the Supreme Court asserted its authority to review decisions of the other branches of government. This nine-member body is primarily an appellate court.⁸⁶ The Court can summarily affirm lower court rulings or dismiss appeals for lack of substantial federal questions rather than decide cases with full opinions after examining the complete record of lower court proceedings, reviewing written briefs that have been submitted by the litigants and other interested parties and hearing oral arguments.

The Supreme Court has discretion to review rulings of lower federal courts and state high courts⁸⁷ involving federal constitutional, statutory, or regulatory issues. When the Court agrees to hear an appeal, it issues a writ of *certiorari*, literally, “to be informed of.” In order for the Court to grant *certiorari*, abbreviated as *cert.*, a minimum of four justices must typically agree to hear an appeal.⁸⁸ When a case is resolved, the Court’s opinion

⁸¹. A list of the states composing each circuit is set forth in 28 U.S.C.A. § 41.

⁸². See, e.g., *Newdow v. U.S. Congress*, 328 F.3d 466 [176 Educ. L. Rep. 44] (9th Cir. 2003), *rev’d*, 542 U.S. 1, 124 S.Ct. 2301, 159 L.Ed.2d 98 [188 Educ. L. Rep. 17] (2004), *reh’g denied*, 542 U.S. 961, 125 S.Ct. 21, 159 L.Ed.2d 851 (2004) (wherein the Ninth Circuit refused a request for an en banc panel to reconsider a ruling over the constitutionality of the words ‘under God’ in the Pledge of Allegiance). [Case No. 15]

⁸³. Chief Justice John Robert’s 2011 *Year-End Report on the Federal Judiciary* revealed that “[f]ilings in the regional courts of appeals fell 1.5% to 55,126. <http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> at 14.

⁸⁴. Published opinions of the Supreme Court can be found in the United States Reports, abbreviated U.S., published by the Supreme Court; the Supreme Court Reporter, abbreviated S.Ct., published by West; and Lawyer’s Edition, abbreviated L.Ed., published by Lawyer’s Cooperative Publishing Company, now in its second series.

⁸⁵. 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).

⁸⁶. The Court has original jurisdiction, meaning that a case can begin there in limited circumstances. Among the areas over which Article III, Section 2, identifies as being in the Court’s original jurisdiction are “[c]ases affecting Ambassadors . . . other public Ministers and Consuls . . . to Controversies between two or more States. . . .”

⁸⁷. 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 [21 Educ. L. Rep. 1122] (1985), for example, was an appeal from the Supreme Court of New Jersey. [Case No. 96]

⁸⁸. The long-standing so-called “Rule of Four” is a judicial, rather than a legislative, creation even though Congress may have had it in mind in enacting the Judiciary Act of 1925. Previously, in 1890, Congress created *certiorari*, or discretionary review, in 26 Stat. 826, Sections 4–6.

Still, some Justices have disagreed on how strictly the rule applies. See, e.g., *Harris v. Pennsylvania Railroad Co.*, 361 U.S. 15, 24, n.2, 80 S.Ct. 22, 4 L.Ed.2d 1 (1959) (Douglas, J., concurring) “When the Act of February 13, 1925 (43 Stat. 936), which broadened our *certiorari* jurisdiction, was before the Congress, Mr. Justice Van Devanter, speaking for the

authoritatively enunciates federal law on the matter while usually explaining the rationale for its judgment.⁸⁹

STATE COURTS

States have their own judicial systems established by their constitutions and legislatures; these systems vary in organization and degree of complexity.⁹⁰ State judicial systems generally include a number of inferior courts such as small claims and county courts; these courts exercise limited jurisdiction that is expressly delineated in the laws under which they were created. All states have trial courts of general jurisdiction and at least one level of appellate review. However, there is little consistency in the names that states apply to their various levels of court. Most states have two levels of appellate courts. As in the federal system, the first level of review, generically referred to as intermediate appellate courts, is typically before a panel of three judges. The highest state courts are generically referred to as courts of last resort. In states with two levels of appeal, the absolute right of appeal for some cases is only to the intermediate appellate court; most other appeals are by the leave of the court.

State courts are, of course, bound by the United States Constitution and must apply it in their decisions, which, under limited circumstances, are subject to review by the Supreme Court. On matters of state law, state

Court, made explicit that the ‘rule of four’ governs the grant of petitions for *certiorari*. He testified before the Subcommittee of the Senate Judiciary Committee as follows: . . . if there were five votes against granting the petition and four in favor of granting it, it would be granted, because we proceed upon the theory that when as many as four members of the court, and even three in some instances, are impressed with the propriety of our taking the case the petition should be granted. This is the uniform way in which petitions for writs of *certiorari* are considered.’ Hearings on S. 2060, Feb. 2, 1924, 68th Cong., 1st Sess., p. 29. *And see* Hearings on H.R. 8206, Dec. 18, 1924, 68th Cong., 2d Sess., p. 8;” *Ohio ex rel. Eaton v. Ohio*, 360 U.S. 246, 247, 79 S.Ct. 978, 3 L.Ed.2d 1200 (1959) (Brennan, J., voting to note probable jurisdiction, in a separate memorandum) “. . . if four Justices or more are of opinion that the questions presented by the appeal should be fully briefed and argued orally, an order noting probable jurisdiction or postponing further consideration of the jurisdictional questions to a hearing on the merits is entered;” *Burrell v. McCray*, 426 U.S. 471, 472, 96 S.Ct. 2640, 48 L.Ed.2d 788 (1976) (per curiam, Stevens, J., concurring) “. . . it is my understanding that at least one Member of the Court who voted to grant *certiorari* has now voted to dismiss the writ; accordingly, the action of the Court does not impair the integrity of the Rule of Four.” *But see Rogers v. Missouri Pacific Railway Co.*, 352 U.S. 500, 529 (Frankfurter, J., dissenting) “The ‘rule of four’ is not a command of Congress. It is a working rule devised by the Court as a practical mode of determining that a case is deserving of review, the theory being that if four Justices find that a legal question of general importance is raised, that is ample proof that the question has such importance.”

89. Chief Justice John Robert’s *2011 Year-End Report on the Federal Judiciary* revealed: The total number of cases filed in the Supreme Court decreased from 8,159 filings in the 2009 Term to 7,857 filings in the 2010 Term, a decrease of 3.7%. The number of cases filed in the Court’s *in forma pauperis* docket decreased from 6,576 filings in the 2009 Term to 6,299 filings in the 2010 Term, a 4.2% decrease. The number of cases filed in the Court’s paid docket decreased from 1,583 filings in the 2009 Term to 1,558 filings in the 2010 Term, a 1.6% decrease. During the 2010 Term, 86 cases were argued and 83 were disposed of in 75 signed opinions, compared to 82 cases argued and 77 disposed of in 73 signed opinions in the 2009 Term.

<http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> at 13.

90. Published opinions of state courts are located in a variety of sources both in print and electronically. The most widely available source is West’s National Reporter System which divides the United States into seven regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, Southern, and South Western; each is in at least its second series.

courts are parallel to their federal counterparts. State courts' interpretations of federal law are subject to review only by the Supreme Court.

Insofar as education is a state function and federal courts exist for federal matters, most educational controversies are handled by state courts. Absent substantial federal questions, cases are tried in state courts. If substantial federal questions are involved with state questions, cases may be heard in either state or federal courts. The increased emphasis on civil rights and liberties, coupled with the use of section 1983, has led to increasing numbers of education cases being filed in federal courts. When federal courts examine cases involving both state and federal law, they must follow interpretations of state law made by the state courts within which they sit.

JUDICIAL PROCEDURES

The procedures of federal and state courts are a complex amalgam of statutes, rules, and common law. Yet, since some basic principles are generally consistent, an overview of these procedures can help readers to have a better understanding of Education Law.

Civil suits start when plaintiffs, the parties initiating litigation, file summonses and complaints or, as these joint documents are called in some jurisdictions, petitions, alleging the facts in dispute. These documents are designed to allege that harm has occurred, that laws are being or were violated, or that officials or agencies are not or have not performed their specified legal duties. The parties initiating actions thereby seek judicial relief, whether legal or equitable damages or a combination of the two. Plaintiffs may, for example, ask courts to find that boards of education broke contracts and that aggrieved employees may receive monetary damages for their losses of salary and orders returning them to their jobs. Alternatively, if parents challenge the actions of school boards for allegedly failing to provide educational programming for their children, they may seek orders to obtain services. If plaintiffs seek to require public officers or agencies to perform nondiscretionary duties, their object is to seek writs of mandamus. If agencies or individuals allegedly are engaged in illegal activities, plaintiffs may ask courts to grant injunctions ordering the parties to discontinue the illegal acts.

Plaintiffs may also seek injunctions to preserve the legal status quo by preventing contemplated actions. Courts may grant preliminary or temporary injunctions, pending the full adjudication of disputes. Courts typically grant temporary injunctions when plaintiffs can show that they will suffer irreparable harm if relief is not granted at once, that there are reasonable probabilities or substantial likelihoods of prevailing on the merits, that the threatened injuries outweigh the potential harm that injunction would impose on defendants, and that the public interest will not suffer. While judicial reasoning on motions for preliminary injunctions may be instructive on the law, they cannot ultimately apply the law to the facts until they are fully set forth at a trial. Courts issue permanent injunctions after trials on the merits, meaning that both sides have had the opportunity to address the substance of the underlying issues.

Insofar as Article 3, Section 2 of the Constitution requires courts to resolve real cases or controversies,⁹¹ the judiciary does not ordinarily decide hypothetical cases or provide advisory opinions.⁹² Not only must there be genuine controversies, but plaintiffs must have individualized legal interests, or standing over disputed points.⁹³ Common law precedent grants taxpayers who wish to sue standing when they challenge local school board expenditures. Merely being taxpayers under common law generally does not grant standing to sue state-level or federal agencies.⁹⁴ Absent statutory authorization, individuals filing suit solely to contest state or federal expenditures must allege some individualized harm, not simply injuries that all citizens or taxpayers would suffer.

When plaintiffs challenge statutes or regulations, they may be questioned either on their faces or as applied. Facial challenges involve claims that provisions are completely invalid and incapable of any legal application. In these cases, courts are not required to examine the facts of actual instances of alleged unlawfulness. When challenges are on statutes or regulations as applied, courts must consider their impact in specific situations.

As disputes head to trial, they pass through a variety of stages. During the pleadings, the plaintiffs initiate litigation by having summonses and complaints served on defendants. These documents are designed to inform defendants about the nature of claims along with enough information to allow them to prepare defenses along with statements of what the plaintiffs seek in the form of damages. Defendant can respond by admitting, denying, or raising new (counter) claims in whole or in part. This stage can go through several rounds of exchanges before the parties move on to the next level of pre-trial activity, discovery.

Once the parties have informed each other of what disputes are about through the pleadings, cases proceed to discovery. During discovery, the parties seek to narrow the disputed issues for trial. In this way, if the parties agree that a teacher's contract was terminated on a specific date, then they can so stipulate and focus on other issues such as the reason for the school board's action. Attorneys ordinarily rely on two tools in discovery: interrogatories and depositions. Interrogatories consist of a series of

91. This section reads, “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . .”

92. See, e.g., *State v. Self*, 155 S.W.3d 756, 761 [195 Educ. L. Rep. 1019] (Mo.2005) (“ . . . a constitutional controversy cannot be manufactured in the trial court or on appeal in order to obtain an advisory opinion”) (reversing a mother’s conviction for knowingly or purposely failing to cause her daughter to attend school regularly). But see *Advisory Opinion to the Attorney Gen.*, 824 So.2d 161 [169 Educ. L. Rep. 449] (Fla.2002) (offering an advisory opinion upholding the constitutionality of a ballot initiative amending the state constitution to require funding of universal pre-kindergarten programs).

93. See, e.g., *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 124 S.Ct. 2301, 159 L.Ed.2d 98 [188 Educ. L. Rep. 17] (2004), *reh’g denied*, 542 U.S. 961, 125 S.Ct. 21, 159 L.Ed.2d 851 (2004) (holding that a father’s challenge to the words “under God” in the Pledge of Allegiance could not proceed because he lacked standing). [Case No. 15]

94. For such a case, see *Arizona Christian School Tuition Org. v. Winn*, ___ U.S. ___, 131 S.Ct. 1436, 179 L.Ed.2d 523 [265 Educ. L. Rep. 855] (2011), *on remand*, 658 F.3d 889 (9th Cir. 2011) (reiterating that being a taxpayer does not provide standing to seek relief in federal court).

written questions prepared by the attorneys of both sides of disputes that each party must answer. Depositions are oral statements made in the presence of the attorneys. Depositions can allow parties to refresh their memories of events before trial since a fair amount of time may pass between the time that suits are filed and when they are litigated. Depositions can also serve as the basis by which to challenge the accuracy of witnesses' testimony or to introduce the evidence if witnesses are unavailable to appear either due to death or because they are unable, or unwilling, to attend and courts lack the authority to compel their appearances.

Judges can dismiss complaints before trial if they determine that allegations, if eventually proven, would not have legally entitled plaintiffs to the relief requested. Additionally, judges may terminate trials if, after plaintiffs presented their evidence, they are convinced that even if the evidence were accepted as true, it did not prove their cases. If plaintiffs pass these two hurdles, the defense attorneys have opportunities to present their versions of the cases.

Before cases can proceed to trial, judges must make two important determinations. First, judges must consider whether plaintiffs have raised allegations that, if proven, would entitle them to relief on claims for which relief can be granted, also known as establishing a *prima facie* case, literally, "at first sight" or "on the face of it." Second, judges must evaluate whether there are genuine disputes over material issues of fact. If judges are satisfied that plaintiffs have met their burdens, then cases can proceed to trial. In the event that judges are convinced that plaintiffs failed to meet their initial burden, and that no genuine issue of fact remain, then they typically grant defendants' motions for summary judgment essentially dismissing the claims. Motions for summary judgment are generally filed before matters head to trial, asking courts to resolve issues without having to engage in actual trials.

Once disputes go to trial, plaintiffs bear the ultimate burden of proof. At trial, after plaintiffs meet their initial burden, the burden may shift to the defendants to counter the initial arguments by raising other points. For instance, if the attorney representing a group of teachers who are contesting a school board's refusal to renew their probationary contracts can argue that their having engaged protected First Amendment activity such as trying to form a union was a substantial factor in its action, then its lawyer must show that the board would have reached the same outcome even if the teachers had not taken part in the protected activity.

The two key "players" at trials are the juries and judges.⁹⁵ Juries, often referred to as triers of fact,⁹⁶ make findings of fact in evaluating what occurred and apply them to the law as interpreted by judges, sometimes called triers of law, reaching conclusions that culminate in judgments and

95. According to Article II, Section 2 of the Constitution, the President "shall nominate and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme [sic] Court, and all other officers of the United States. . . ." Depending on state and local law, some judges are elected while others are appointed.

96. The jury selection process involves attorneys for both the plaintiff and defendant questioning individuals to evaluate their ability to be impartial. This process, which is often referred to as "voir dire," literally "to speak the truth," is designed to select impartial jurors.

decrees specifying the outcome of the litigation. Federal trial courts and some state trial courts hand down written opinions explaining their rationales. Although only the parties to specific cases are bound by trial court rulings,⁹⁷ opinions become part of the common law, indicating what the outcomes of similar disputes are likely to be unless there are material differences between the suits.

At least one level of appeal is generally available for all civil cases. The parties bringing appeals are generally known as appellants or petitioners; opposing parties are typically referred to as appellees or respondents. On appeal, appellants attempt to demonstrate that lower courts erred either in their findings of fact, conclusions of law, or both. As to facts, parties may claim that judges improperly admitted evidence, misinterpreted testimony and exhibits, and/or otherwise incorrectly conducted trials. As to questions of law, parties may claim that judges applied the wrong law or misconstrued the law in some fashion in reaching judgments.

Appellate courts neither hear witnesses nor consider issues that were not raised at trial. Rather, they review the written records of lower court proceedings, including the testimony of witnesses, examine briefs, and usually hear oral arguments of both parties. As part of the appellate process, both parties submit written arguments known as briefs to the judges in support of their positions. In many cases, most notably at the Supreme Court, parties interested in the outcomes of cases can submit so-called *amicus curiae*, literally, “friend of the court,” briefs seeking to sway the judges in their favor.

Appellate courts can affirm, reverse, vacate, modify and/or remand earlier judgments. In remanding, or sending cases back to lower courts for further action, appellate panels can direct lower courts to modify their previous decisions or, in cases involving remands to trial courts, can order them to re-try disputes in their entirety. On questions of fact, appellate courts must accept the findings of trial courts unless they are clearly erroneous. Appellate panels must accept the evidence from trial courts that observed the parties and witnesses, while appellate courts are limited to evidence in the written records that they review. As to conclusions of law, appellate courts owe no deference to the reasoning of trial courts and may disagree on the meaning of laws.

The opinions of the majority of judges in appellate cases become precedent, the law of the case that is controlling within jurisdictions. Judges who agree with the ultimate outcome but who do not support all of the reasoning in majority opinions may file concurring opinions. Judges may also file dissenting opinions that justify their reasons for disagreeing with the majorities. Once majorities of judges agree on opinions, regardless of the margin of a vote, they become precedent in given jurisdictions. For

97. Class actions involve one or more representatives of a “class” bringing suit on behalf of all members of the group. If courts permit cases to proceed as class actions, the outcomes are binding on all members of the classes. In order to maintain class actions, plaintiff classes must assert claims that are typical of their classes, the question(s) of law must be common to all members, getting all members of the classes into suits individually must be impracticable, and plaintiff classes must adequately protect the interests of all members of the classes.

example, rulings of the Supreme Court are binding on all lower courts while decisions of state supreme courts are binding only in those states.

On occasion, judges include gratuitous statements in their analyses addressing rules of law or legal principles that are not directly involved in the resolution of cases. Insofar as these remarks, known as *obiter dictum*, literally, “a remark by the way,” or *dictum* (*dicta*, in plural) are of no precedential value, judges, lawyers, and students of the law must be careful to distinguish between such voluntary, non-binding comments and a case’s holding or rule of law. Although *dicta* is of no precedential value, it can be useful as a form of non-binding judicial perspectives.

The opinions of appellate courts typically indicate the point or points of law on which they agree, or disagree, with lower courts. The higher courts are in the judicial hierarchy, the more authoritative their opinions. Lower courts are bound by the orders and opinions of higher courts in their jurisdictions. At common law, opinions of courts in one jurisdiction, although not binding precedent on courts in other jurisdictions, are persuasive or non-binding on points that are not treated by their legislatures. Decisions of federal circuit courts are binding on federal trial courts within their jurisdictions and persuasive elsewhere. Although some members of the Supreme Court have occasionally,⁹⁸ but not universally,⁹⁹ sought to apply international law in their opinions, this issue is beyond the scope of this book.

Insofar as there is ultimately only one answer to questions of federal law, the Supreme Court usually grants *certiorari* to resolve disagreements between and among the circuits.¹⁰⁰ Each time courts cite opinions approvingly, the weight of those cases on the issues increases. In the uncommon situation of pluralities, where less than a majority of judges agrees on the same rationale in a case, the earlier judgments remain in place for the parties but the outcome is not binding on other litigants or in other jurisdictions.¹⁰¹

98. For cases applying international law, *see, e.g., Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) (invalidating a law that made it a crime for two persons of the same sex to engage in specified intimate sexual conduct as unconstitutional as applied to adult males who participated in a consensual act of sodomy in the privacy of their home); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (relying in part on the influence of international law in invalidating the imposition of the death penalty).

99. For cases rejecting the application of international law, *see, e.g. Sosa v. Alvarez-Machain*, 542 U.S. 692, 124 S.Ct. 2739, 159 L.Ed.2d 718 (2004) (unanimously rejecting the wholesale incorporation of customary international law into American federal court adjudications under the Federal Torts Claim Act); *Sanchez-Llamas v. Oregon*, 546 U.S. 1001, 126 S.Ct. 620, 163 L.Ed.2d 503 (2006) (refusing to accept the interpretation of the International Court of Justice as applied to the Vienna Convention on Consular Relations).

100. Compare, *e.g., Sherman v. Community Consol. School Dist. 21 of Wheeling Twp.*, 980 F.2d 437 [79 Educ. L. Rep. 396] (7th Cir.1992), *cert. denied*, 508 U.S. 950, 113 S.Ct. 2439, 124 L.Ed.2d 658 (1993) (upholding the constitutionality of the Pledge of Allegiance) with *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 124 S.Ct. 2301, 159 L.Ed.2d 98 [188 Educ. L. Rep. 17] (2004), *reh’g denied*, 542 U.S. 961, 125 S.Ct. 21, 159 L.Ed.2d 851 (2004) (initially striking down the words “under God” in the Pledge as psychologically coercive). [Case No. 15]

101. For plurality decisions, *see, e.g., Mitchell v. Helms*, 530 U.S. 793, 120 S.Ct. 2530, 147 L.Ed.2d 660 [145 Educ. L. Rep. 44] (2000) (upholding the constitutionality of Chapter 2 of Title I, now Title VI, of the Elementary and Secondary Education Act, a far-reaching federal law permitting the loan of instructional materials including library books, computers, television sets, tape recorders, and maps, to non-public schools); *Regents of the Univ. of Cal. v.*

Once the highest courts in jurisdictions render their judgments, their opinions become *res judicata*, literally, “a matter judged,” such that parties cannot return the disputes to court for further litigation. This is true not only for specific court systems, but also between state and federal courts when one system has addressed an issue. Further, *res judicata* bars any attempt to relitigate the same claims under different theories of recovery.

POSTSCRIPT

To the extent that this volume, and all legal writings, rely on the legal system of citation, this brief postscript is designed for students who may be taking their first law course and, as such, are unfamiliar with legal citations.

Prior to being published in bound volumes, most cases are available in slip opinions from a variety of loose-leaf services and from electronic sources. Statutes and regulations are available in similar readily accessible formats. Legal materials are also available online from a variety of sources, most notably WESTLAW and LEXIS-NEXIS. State laws and regulations can generally be accessed online.

Supreme Court cases can be located in a variety of sources. The official version of Supreme Court cases is the United States Reports (U.S.). The same opinions appear in two unofficial versions, West’s Supreme Court Reporter (S.Ct.) and the Lawyer’s Edition, published by Lawyers Cooperative Publishing Company, now in its second series (L.Ed.2d). The advantage of the unofficial versions of cases, and statutes, described below, is that in addition to the entire text of the Court’s opinions, publishers provide valuable research tools and assistance, in the forms of headnotes that facilitate the efforts of attorneys, educational practitioners, and students of the law as they engage in legal research.

Federal appellate cases are published in the Federal Reporter, now in its third series (F.3d). Cases that are not chosen for publication in F.3d are printed in the Federal Appendix (Fed.Appx.); cases that appear in the Federal Appendix are of no precedential value. Federal trial court rulings are in the Federal Supplement, now in its second series (F.Supp.2d). State cases are published in a variety of publications, most notably in West’s National Reporter system, which breaks the country up into seven regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, South Western, and Southern, all of which are in the second or third series.

The official version of federal statutes is the United States Code (U.S.C.). As with Supreme Court cases, West publishes an unofficial, annotated version of federal statutes, the United States Code Annotated (U.S.C.A.). The final version of federal regulations can be found in the Code

Bakke, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (permitting a medical school admissions policy that was designed to increase minority enrollment to remain in place).

of Federal Regulations (C.F.R.). As with cases, state statutes and regulations are published in a variety of sources.

As imposing as they may appear, legal citations are easy to read. The first number in citations indicates the volume numbers where the cases, statutes, or regulations are located; the following abbreviation refers to the books or series of volumes in which the materials are located; the second number refers to the page on which cases begin or the section numbers of statutes or regulations; the last part of citations, set off by parentheses, typically includes the names of the courts,¹⁰² and the year in which disputes were resolved.

The following brief illustrations of how to read citations for cases, statutes, and regulations should help to clarify this material. The citation for *Brown v. Board of Education*, the Supreme Court's ruling calling for equal educational opportunities for all children by ending segregation based on race, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), reveals that it can be found in volume 347 of the United States Reports, the Court's official version, starting at page 483. *Brown* can also be located in volume 74 of West's Supreme Court Reporter, beginning on page 686, and volume 98 of the Lawyer's Edition, starting on page 873. Of course, *Brown* was decided in 1954. For all other courts, abbreviated versions of their names also appear with the date.

Turning to a statute, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 *et seq.*, can be found in Title 20 of the United States Code starting at section 1400. The IDEA's regulations are located at 300 C.F.R. §§ 300.1 *et seq.*, meaning that they are in title 300 of the Code of Federal Regulations, beginning at section 300.1. State statutes and regulations follow a similar pattern.

102. As noted below, an exception applies to the Supreme Court since the name of the reporter is self-identifying.