

THE
Illustrated
SUPREME COURT REVIEW



JAMES CRAVEN RAY RIECK EMAN CASALLOS

THE
Illustrated
SUPREME COURT REVIEW
2024 — 2025

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THANK YOU FOR READING THE SECOND VOLUME OF
THE ILLUSTRATED SUPREME COURT REVIEW!

I'M OVERJOYED TO CONTINUE THIS PROJECT WITH
OUR EXPANDED TEAM. WE NOW HAVE THREE ARTISTS
AND SEVEN SCHOLARS BRINGING THESE IMPORTANT
CASES TO LIFE THROUGH ART AND ANALYSIS.

THIS VOLUME COVERS MAJOR CASES FROM THE OCT.
2024-2025 TERM. *TRUMP V. CASA* RESHAPES JUDICIAL
POWER, LIMITING DISTRICT COURTS WHILE SHIFTING
POLICY CHECKS TO THE SUPREME COURT LEVEL.
TIKTOK V. GARLAND AND *FSC V. PAXTON* EXPAND
GOVERNMENT AUTHORITY OVER ONLINE SPACES, WITH
EFFECTS MANY READERS WILL EXPERIENCE DIRECTLY.

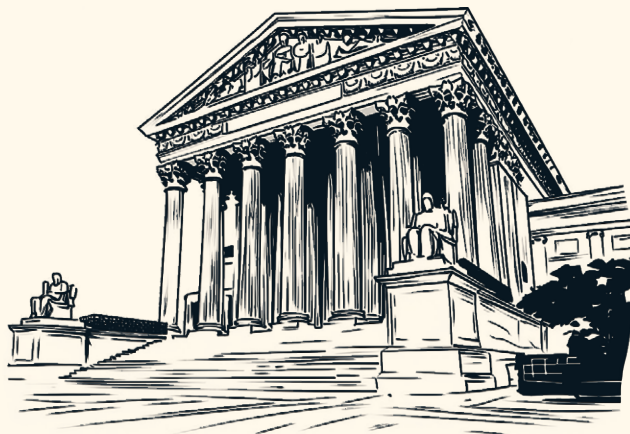
SEEING THE DELIGHT ON PEOPLE'S FACES WHEN THEY
OPEN OUR BOOK AND DISCOVER OUR FULL-COLOR
ILLUSTRATIONS HAS BEEN INCREDIBLY FULFILLING.

THANK YOU, AGAIN, FOR GIVING THIS VOLUME YOUR
TIME AND ATTENTION.

THE WORKS OF OUR SCHOLARS ARE ALWAYS
AVAILABLE ON [CATO.ORG](https://www.cato.org).

WARM REGARDS,

JAMES CRAVEN



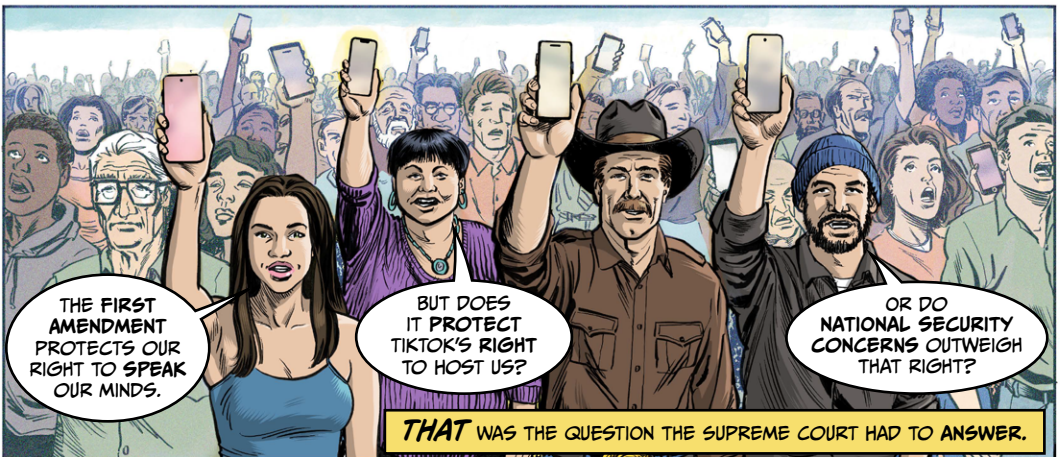
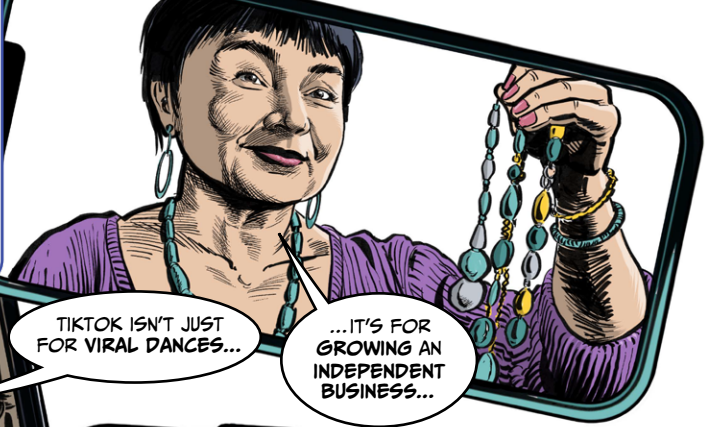
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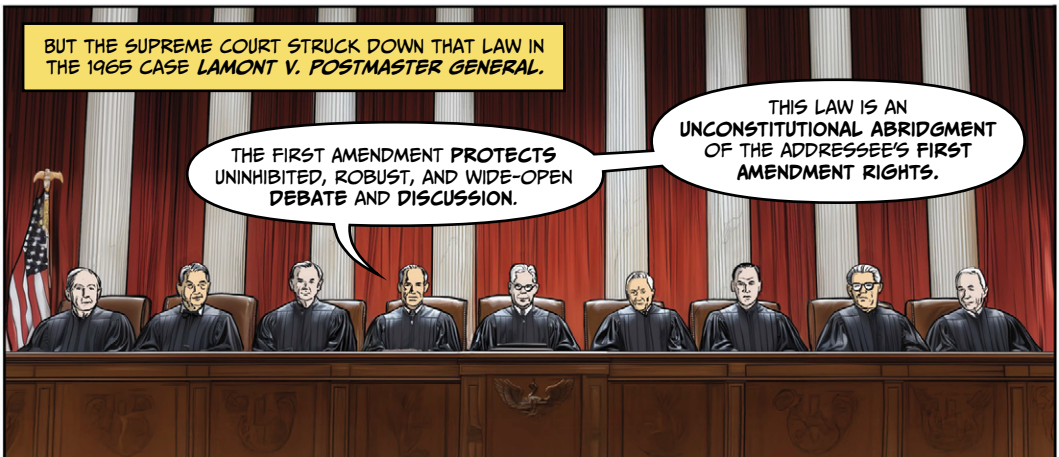
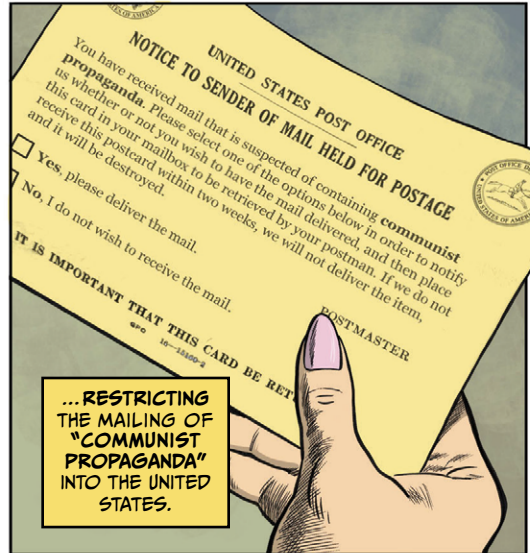
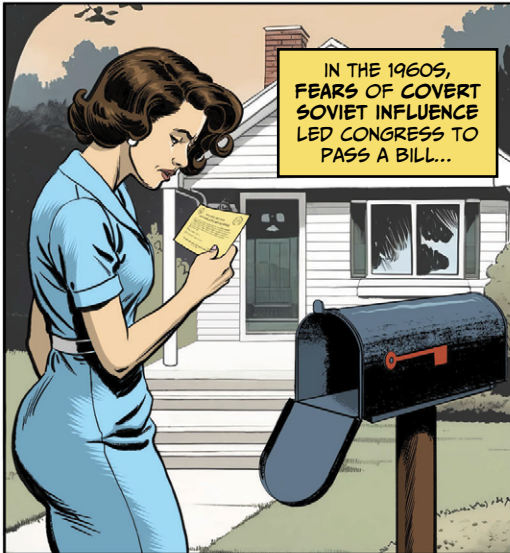
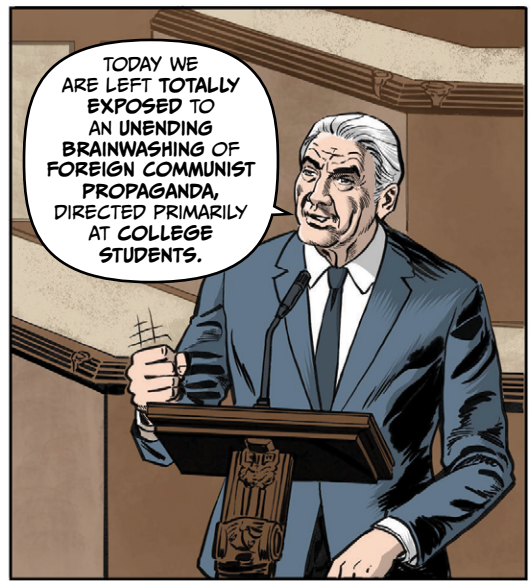
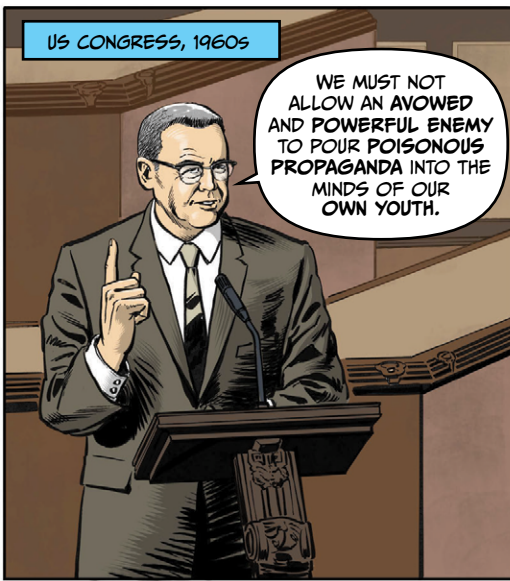


Garland



Thomas Berry





US CONGRESS, 2020s

COMMUNIST CHINA IS USING TIKTOK AS A TOOL TO SPREAD DANGEROUS PROPAGANDA.

TIKTOK IS COMMUNIST CHINESE MALWARE. IT IS DIGITAL FENTANYL THAT IS POISONING THE MINDS OF OUR YOUTH EVERY DAY ON A MASSIVE SCALE.

IN 2024, SIMILAR FEARS LED CONGRESS TO PASS A BILL REQUIRING TIKTOK EITHER TO SEVER ITS RELATIONSHIP WITH ITS PARENT COMPANY OR CEASE OPERATING IN THE UNITED STATES.

WARNING!

TikTok

may go dark on January 20

170 MILLION AMERICANS USE TIKTOK, MAKING THE LAW A SPEECH RESTRICTION OF UNPRECEDENTED SCOPE. HOW COULD SUCH A WIDE-RANGING BAN BE COMPATIBLE WITH THE CONSTITUTION?



TIKTOK AND ITS USERS QUICKLY CHALLENGED THE LAW IN COURT, WHERE THE GOVERNMENT SHIFTED ITS FOCUS.



THE GOVERNMENT JUSTIFIED THE LAW BY POINTING TO POTENTIAL DATA PRIVACY CONCERNS.

☐ By clicking here, you give TikTok permission to access your contacts and user data.

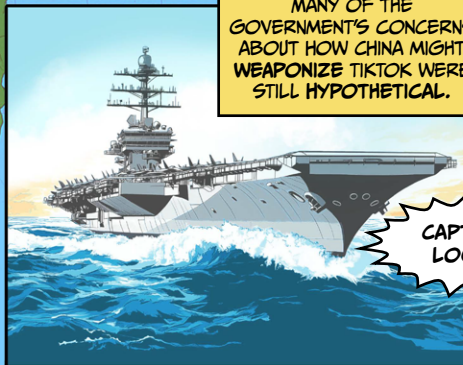
BECAUSE CHINESE LAW EMPOWERS ITS GOVERNMENT TO ACCESS PRIVATE DATA—AND BROADLY COMPELS TIKTOK'S CHINESE PARENT COMPANY, **BYTEDANCE**, TO ASSIST THE GOVERNMENT WITH INTELLIGENCE WORK—

—THE UNITED STATES ARGUED THAT TIKTOK COULD SERVE BOTH AS A DATA-COLLECTION TOOL FOR CHINA AND AS A CHANNEL FOR ITS PROPAGANDA.

BEIJING

SINGAPORE

MANY OF THE GOVERNMENT'S CONCERNS ABOUT HOW CHINA MIGHT WEAPONIZE TIKTOK WERE STILL HYPOTHETICAL.



CAPTAIN, LOOK!

IT SAYS ON TIKTOK THAT WE SHOT FIRST!

I TOLD YOU TO DELETE THAT APP.

SHOULD WE TURN AROUND AND GO HOME?

NO!

AS FOR ITS FEAR OF CHINESE DATA COLLECTION, THE US GOVERNMENT SAID IT HAD DETAILED EVIDENCE—BUT BECAUSE IT WAS CLASSIFIED, THE US WOULDN'T LET THE PUBLIC OR TIKTOK'S LAWYERS SEE IT.

LEGAL BRIEF

The risk is particularly high

FORTUNATELY, BOTH THE DISTRICT OF COLUMBIA'S APPELLATE COURT AND THE SUPREME COURT MADE CLEAR THAT THEY DID NOT TAKE THIS CLASSIFIED INFORMATION INTO ACCOUNT, SINCE DOING SO WOULD HAVE VIOLATED TIKTOK'S RIGHT TO CHALLENGE THE EVIDENCE AGAINST IT.

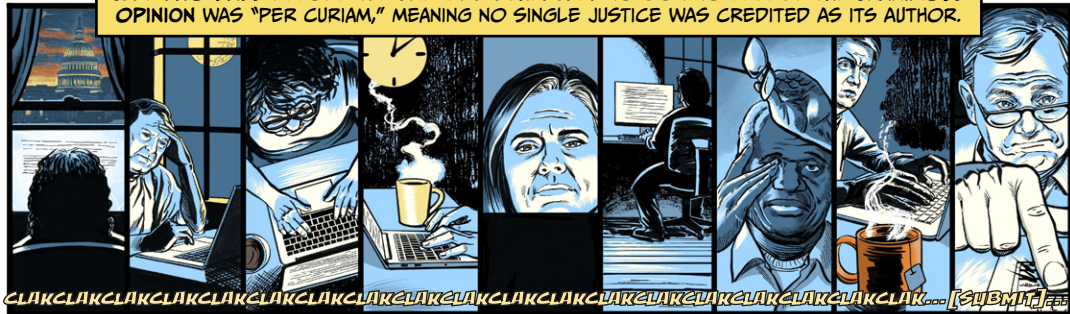
LEGAL BRIEF

The risk is particularly high

Rlllpppp!

THE EVIDENCE USED TO PROVE THE GOVERNMENT'S CASE MUST BE DISCLOSED TO TIKTOK SO THEY HAVE AN OPPORTUNITY TO SHOW THAT IT IS UNTRUE.

AFTER A FAST-TRACK BRIEFING AND ARGUMENT, THE SUPREME COURT ISSUED ITS OPINION JUST TWO DAYS BEFORE THE LAW WAS SCHEDULED TO GO INTO EFFECT. THE UNANIMOUS OPINION WAS "PER CURIAM," MEANING NO SINGLE JUSTICE WAS CREDITED AS ITS AUTHOR.



SINCE THE QUICKLY WRITTEN OPINION ADDRESSED NOVEL AND UNFAMILIAR TECHNOLOGY, THE COURT WROTE THAT ITS "ANALYSIS MUST BE UNDERSTOOD TO BE NARROWLY FOCUSED."

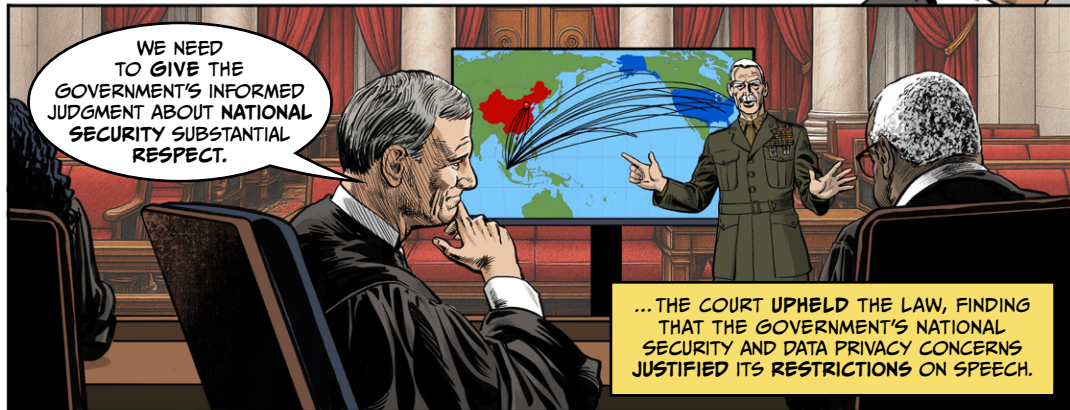


WHILE THE JUSTICES DIDN'T BUY THAT THE BAN WAS JUSTIFIED BY FEARS CHINA MIGHT WEAPONIZE TIKTOK BY CONTROLLING WHAT USERS SEE...

ONE MAN'S "COVERT CONTENT MANIPULATION" IS ANOTHER'S "EDITORIAL DISCRETION."



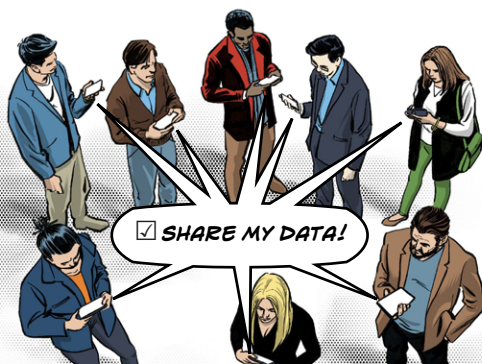
WE NEED TO GIVE THE GOVERNMENT'S INFORMED JUDGMENT ABOUT NATIONAL SECURITY SUBSTANTIAL RESPECT.



...THE COURT UPHELD THE LAW, FINDING THAT THE GOVERNMENT'S NATIONAL SECURITY AND DATA PRIVACY CONCERNS JUSTIFIED ITS RESTRICTIONS ON SPEECH.

EVEN THOUGH TIKTOK IS FAR FROM THE ONLY APP OR WEBSITE THAT COLLECTS USERS' DATA AND HAS TIES TO CHINA, THE COURT HELD THAT TIKTOK COULD BE SINGLED OUT BECAUSE IT HAS MANY MORE AMERICAN USERS THAN ANY OTHER SUCH SERVICE.

THE RULING SENT TIKTOK OFFLINE. BUT SOON AFTER PRESIDENT TRUMP TOOK OFFICE, HE VOWED NOT TO ENFORCE THE LAW UNTIL A DEAL WAS REACHED—SO TIKTOK RETURNED.



FOR NOW... THE FUTURE OF TIKTOK—AND FREE SPEECH—REMAINS IN FLUX.



Perttu

u

Richards

★ ★ ★ ★ ★ ★ ★

James Craven

KYLE RICHARDS ARRIVED AT THE US DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN WITH TWO FELLOW PLAINTIFFS AND A DISTURBING ALLEGATION.

ACCORDING TO RICHARDS—A PRISONER AT BARAGA CORRECTIONAL FACILITY—HE AND OTHERS EXPERIENCED BRUTAL, PERSISTENT **SEXUAL HARASSMENT** AND RETALIATION FROM ONE OF THE PRISON'S RESIDENT UNIT MANAGERS...

...THOMAS PERTTU.

BUT THE JUDGE RULED THAT RICHARDS NEEDED TO GO THROUGH THE PRISON'S GRIEVANCE SYSTEM FIRST, SHUTTING DOWN HIS CASE BEFORE IT COULD REACH A JURY.

UNDER THE PRISON LITIGATION REFORM ACT (PLRA),* COURTS CAN'T HEAR CASES UNLESS A PRISONER HAS EXHAUSTED ALL AVAILABLE REMEDIES WITHIN THE PRISON SYSTEM, AND NONE OF YOU HAVE DONE THAT YET.

*The Prison Litigation Reform Act (PLRA) is a 1996 federal law designed to reduce frivolous prisoner lawsuits by requiring prisoners to complete all available prison grievance procedures before bringing civil rights claims to federal court.

RICHARDS, HIS FELLOW WOULD-BE PLAINTIFFS, AND MANY WITNESSES HAD TESTIFIED THAT THE GRIEVANCE SYSTEM WAS **BADLY BROKEN**—AND THAT THE DEFENDANT USED IT TO ENSURE PRISONERS' HARASSMENT AND RETALIATION CLAIMS NEVER SAW THE LIGHT OF DAY.

WE TAKE GRIEVANCES SERIOUSLY. BUT RICHARDS NEVER FULLY COMPLETED THE PROCESS.

YEAH... THAT'S BECAUSE PERTTU KEEPS DESTROYING OUR GRIEVANCE PAPERWORK EVERY TIME WE TRY TO FILE IT!

BUT THE JUDGE DIDN'T FIND RICHARDS' WITNESSES CREDIBLE.

AND THIS HAPPENED ON THURSDAY, RIGHT?

JUDGE

I DON'T KNOW THE EXACT DATE...

THE DAYS KIND OF BLUR TOGETHER FOR US.

YOUR WITNESSES CAN'T RECALL KEY DETAILS, AND YOU'RE LEADING THEM IN YOUR QUESTIONS. I CAN'T FIND THAT THE PLRA'S INTERNAL-GRIEVANCE REQUIREMENTS HAVE BEEN MET BASED ON THIS TESTIMONY.

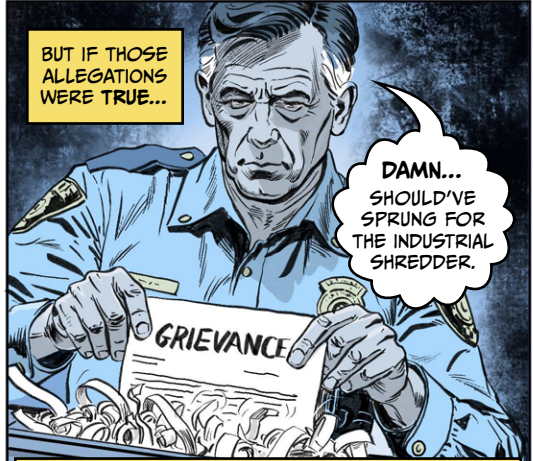
HAD THE PLRA'S EXHAUSTION REQUIREMENTS FILTERED OUT A FRIVOLOUS CASE—OR LET PRISON OFFICIALS BURY AN EXPLOSIVE ONE BEFORE IT EVER REACHED A JURY?

IT'S IMPOSSIBLE TO SAY WITHOUT KNOWING WHETHER PERTTU REALLY WAS PREVENTING RICHARDS FROM FILING INTERNAL GRIEVANCES.

IF RICHARDS' ALLEGATIONS ABOUT PERTTU AND OTHER PRISON OFFICIALS INTERFERING WITH HIS EFFORTS TO PURSUE INTERNAL GRIEVANCE PROCEDURES WERE BASELESS, THEN THE PLRA HAD WORKED AS INTENDED.



BUT IF THOSE ALLEGATIONS WERE TRUE...



DAMN...
SHOULD'VE
SPRUNG FOR
THE INDUSTRIAL
SHREDDER.

... THEN THE PLRA WAS BEING MISUSED TO SWEEP HORRIFIC MISCONDUCT UNDER THE RUG AND ENSURE THE VICTIMS NEVER GOT THEIR DAY IN COURT.

IN OTHER WORDS, WHETHER RICHARDS COULD "EXHAUST ALL REMEDIES" UNDER THE PLRA HINGED ON THE VERY ALLEGATIONS HE WAS TRYING TO PROVE.

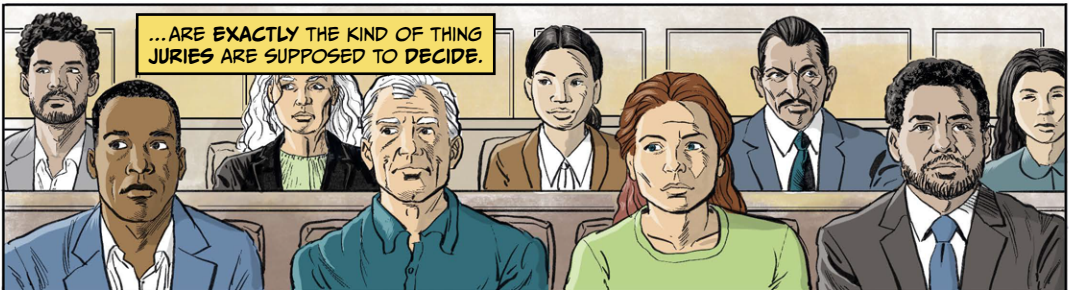


AND THE PLRA PREVENTED HIM FROM PUTTING THOSE ALLEGATIONS IN FRONT OF AN IMPARTIAL JURY, A SAFEGUARD THE SEVENTH AMENDMENT WAS MEANT TO PRESERVE.

IN FACT, QUESTIONS LIKE THE CREDIBILITY OF THE WITNESSES WHO SUPPORTED RICHARDS AND HIS FELLOW PLAINTIFFS...



...ARE EXACTLY THE KIND OF THING JURIES ARE SUPPOSED TO DECIDE.



THE FOUNDING FATHERS INTENDED CITIZEN JURIES TO BE THE ULTIMATE CHECK ON GOVERNMENT POWER.

I CONSIDER TRIAL BY JURY AS THE ONLY ANCHOR EVER YET IMAGINED BY MAN, BY WHICH A GOVERNMENT CAN BE HELD TO THE PRINCIPLES OF ITS CONSTITUTION.



AND THE FOUNDERS KNEW WHAT HAPPENED WHEN GOVERNMENT OFFICIALS USED LEGAL TRICKS TO AVOID JURY TRIALS...

AH, JOHN HANCOCK. FRESH OIL AND TAR ABOARD... BUT NO PERMIT?

I HAVEN'T LEFT PORT!

HEARD YOU BROUGHT QUITE THE HAUL OF WINE IN LAST MONTH. YET YOU'VE PAID FEW DUTIES.

YOU'LL HAVE TO PROVE WHATEVER YOU'RE ALLEGING.

OUR TIDESMAN'S SWORN AFFIDAVIT SAYS THE MISSING WINE WAS UNLADEN BEFORE ENTRY. THAT PROVES ENOUGH!



GIVEN THE CHARGES, WE'RE GOING TO HAVE TO TAKE YOUR SHIP.

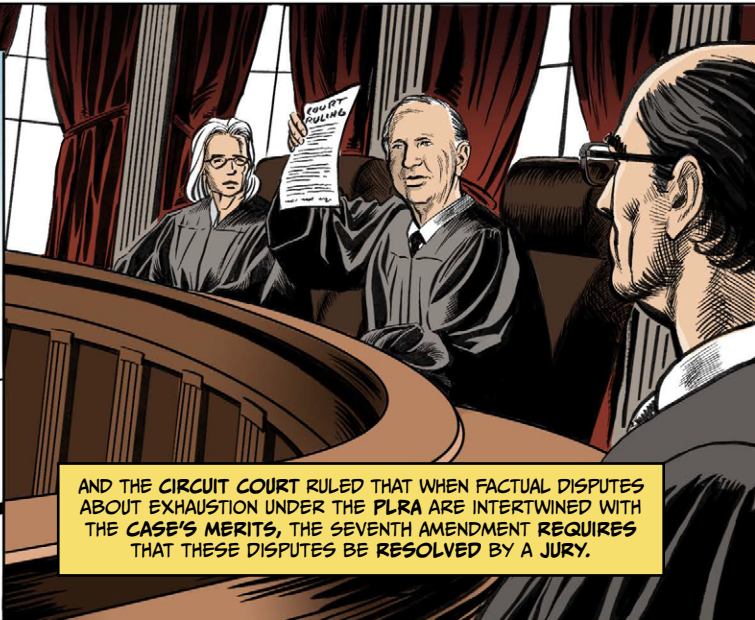
FORGET IT!

I HAVE A RIGHT TO TRIAL BY JURY--AND MY FELLOW COUNTRYMEN WILL NEVER LET YOU GET AWAY WITH THIS.

I'M AFRAID JURY TRIALS AREN'T AVAILABLE FOR SHIP-CONDEMNATION CASES. BUT DON'T WORRY--THE CROWN HAS A VERY EFFICIENT SYSTEM FOR THESE MATTERS.



RICHARDS APPEALED TO THE SIXTH CIRCUIT, ASSERTING HIS RIGHT TO A JURY TRIAL.



AND THE CIRCUIT COURT RULED THAT WHEN FACTUAL DISPUTES ABOUT EXHAUSTION UNDER THE PLRA ARE INTERTWINED WITH THE CASE'S MERITS, THE SEVENTH AMENDMENT REQUIRES THAT THESE DISPUTES BE RESOLVED BY A JURY.

AFTER PERTTU APPEALED THAT DECISION, THE CASE MADE ITS WAY TO THE SUPREME COURT.

WRITING FOR THE COURT, CHIEF JUSTICE ROBERTS SAID THE ANSWER LAY NOT IN THE CONSTITUTION—BUT IN THE STATUTE ITSELF.

"BEFORE INQUIRING INTO THE APPLICABILITY OF THE SEVENTH AMENDMENT, WE MUST FIRST ASCERTAIN WHETHER A CONSTRUCTION OF THE PLRA IS FAIRLY POSSIBLE BY WHICH THE CONSTITUTIONAL QUESTION MAY BE AVOIDED."

IN DOING SO, ROBERTS LIMITED THE COURT'S HOLDING TO PLRA CASES, RATHER THAN ADOPTING A BROAD CONSTITUTIONAL RULE ABOUT INTERTWINED FACTUAL DISPUTES.

BUT WHILE THE COURT'S DECISION WAS NARROWER THAN THE SIXTH CIRCUIT'S, IT ULTIMATELY AFFIRMED THE SIXTH CIRCUIT'S RULING.

IT DETERMINED THAT SINCE THE PLRA WAS SILENT ON WHETHER JUDGES OR JURIES SHOULD RESOLVE EXHAUSTION DISPUTES, THE USUAL PRACTICE SHOULD BE FOLLOWED.



IT PROVED TO BE A CLOSE CASE, WITH ROBERTS' OPINION NARROWLY SECURING A 5-4 MAJORITY.

JUSTICE BARRETT AUTHORED THE DISSENT.

THE PLRA SAYS NOTHING ABOUT THE RIGHT TO A JURY TRIAL ON THE QUESTION OF EXHAUSTION.

NOW, ANY PRISONER CAN POTENTIALLY OBTAIN FULL JURY REVIEW OF THE EXHAUSTION QUESTION THAT WAS DESIGNED TO STREAMLINE PRISONER LITIGATION—BY TRANSFORMING HIS INABILITY TO USE THE PRISON SYSTEM INTO A CLAIM FOR RELIEF.

THOUGH IT WAS A CLOSE DECISION, RICHARDS' CLAIM CAN NOW MOVE FORWARD.

WHAT HAPPENS NEXT WILL BE UP TO THE JURY!



St. Isidore

u

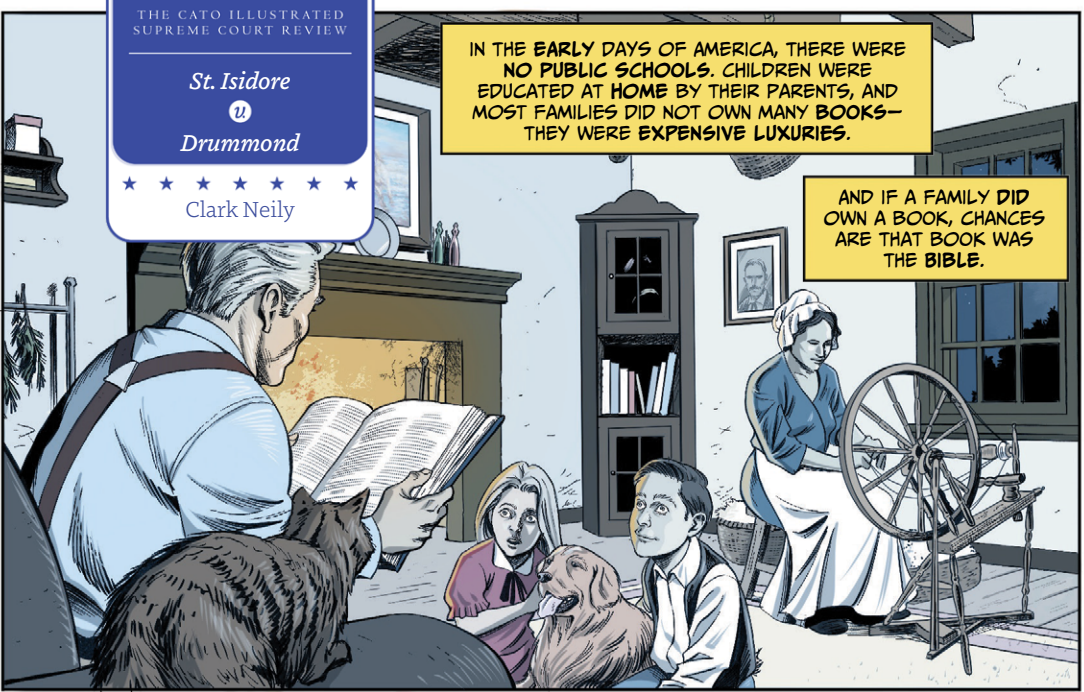
Drummond

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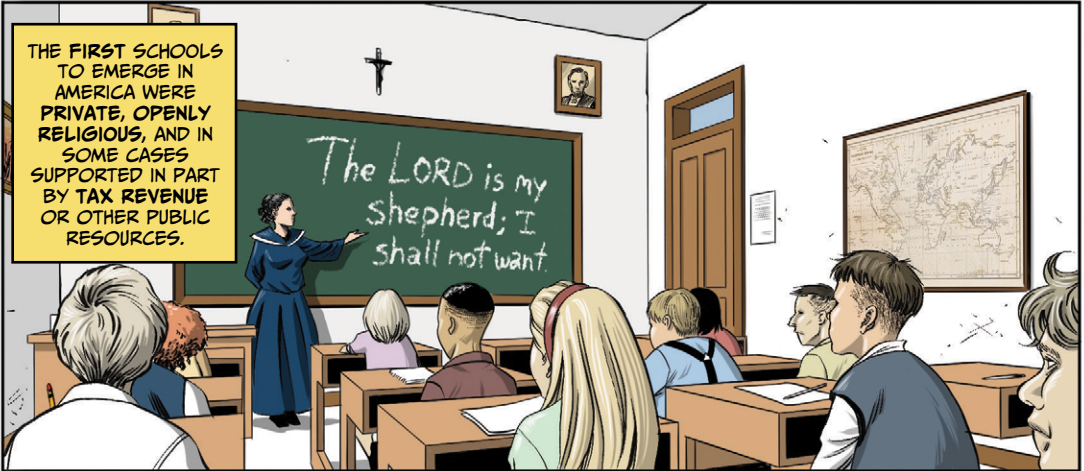
Clark Neily

IN THE EARLY DAYS OF AMERICA, THERE WERE NO PUBLIC SCHOOLS. CHILDREN WERE EDUCATED AT HOME BY THEIR PARENTS, AND MOST FAMILIES DID NOT OWN MANY BOOKS—THEY WERE EXPENSIVE LUXURIES.

AND IF A FAMILY DID OWN A BOOK, CHANCES ARE THAT BOOK WAS THE BIBLE.



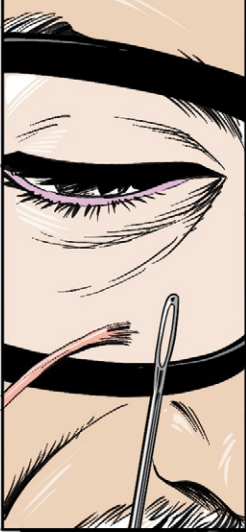
THE FIRST SCHOOLS TO EMERGE IN AMERICA WERE PRIVATE, OPENLY RELIGIOUS, AND IN SOME CASES SUPPORTED IN PART BY TAX REVENUE OR OTHER PUBLIC RESOURCES.



THE RELIGIOUS—SPECIFICALLY, PROTESTANT CHRISTIAN—CHARACTER OF MANY PUBLIC SCHOOLS CONTINUED WELL INTO THE 19TH AND EVEN 20TH CENTURIES.



THIS CAUSED GROWING TENSION WITH IMMIGRANTS FROM TRADITIONALLY CATHOLIC COUNTRIES SUCH AS IRELAND AND ITALY, WHO DID NOT APPRECIATE THEIR CHILDREN BEING TAUGHT BOTH READING AND THEOLOGY FROM THE KING JAMES BIBLE.

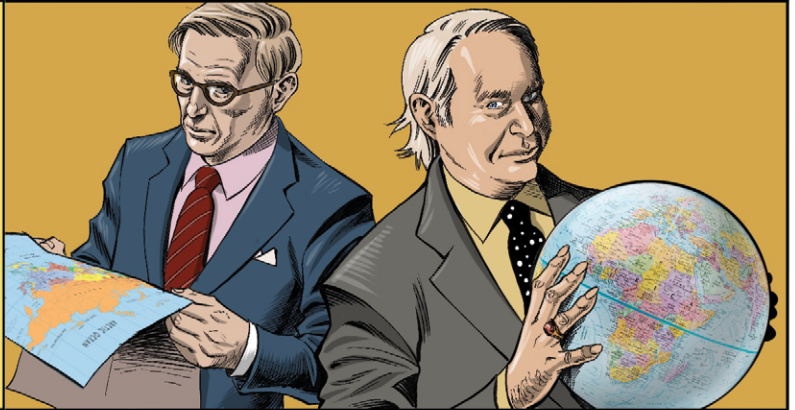


THE FIRST AMENDMENT SAYS THE GOVERNMENT MUST NEITHER ESTABLISH NOR PREVENT THE FREE EXERCISE OF RELIGION.

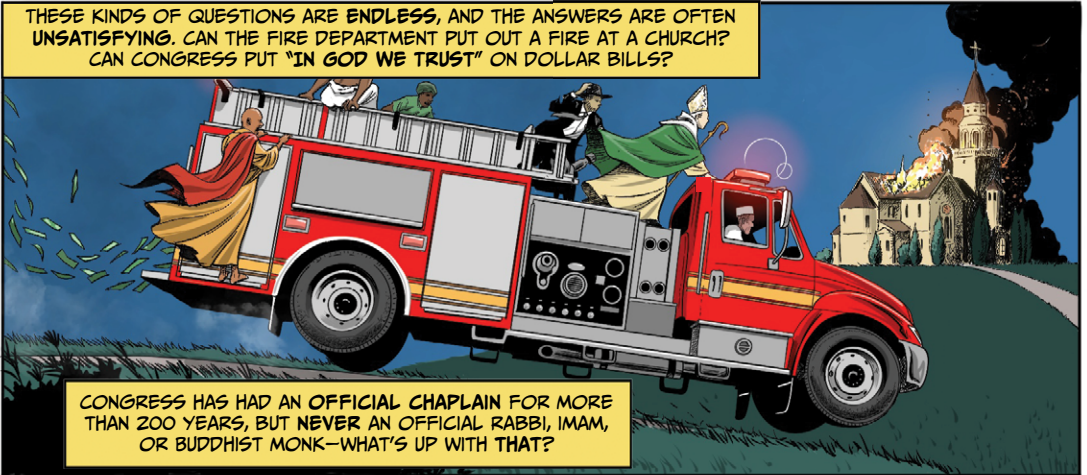


DRAWING THE LINE BETWEEN THOSE TWO COMMANDS—AND DECIDING WHETHER THERE IS ANY SPACE FOR "PLAY IN THE JOINTS" BETWEEN THEM—HAS BEEN A MAJOR CHALLENGE FOR THE COURTS.

AS ESSAYIST GEORGE F. WILL HUMOROUSLY RELATED IN A 2021 COLUMN, "DECADES AGO, THE SUPREME COURT RULED THAT THE FIRST AMENDMENT'S PROHIBITION OF 'ESTABLISHMENT' OF RELIGION WAS VIOLATED IF THE GOVERNMENT SUPPLIED MAPS TO RELIGIOUS SCHOOLS, BUT NOT IF IT SUPPLIED BOOKS. SO, SENATOR DANIEL PATRICK MOYNIHAN MISCHIEVOUSLY WONDERED: WHAT ABOUT ATLASES, WHICH ARE BOOKS OF MAPS?"



THESE KINDS OF QUESTIONS ARE ENDLESS, AND THE ANSWERS ARE OFTEN UNSATISFYING. CAN THE FIRE DEPARTMENT PUT OUT A FIRE AT A CHURCH? CAN CONGRESS PUT "IN GOD WE TRUST" ON DOLLAR BILLS?

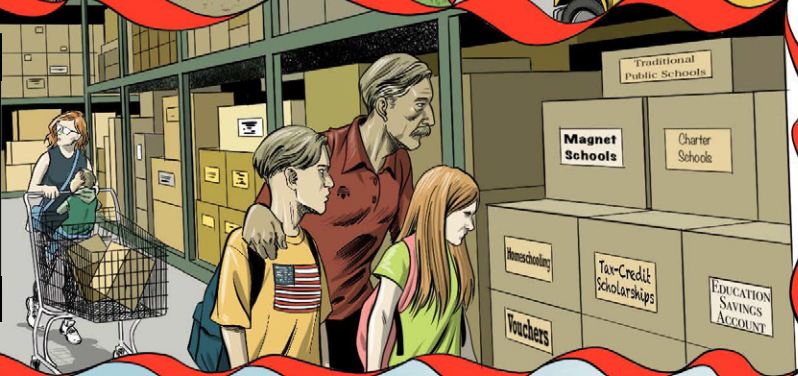


CONGRESS HAS HAD AN OFFICIAL CHAPLAIN FOR MORE THAN 200 YEARS, BUT NEVER AN OFFICIAL RABBI, IMAM, OR BUDDHIST MONK—WHAT'S UP WITH THAT?

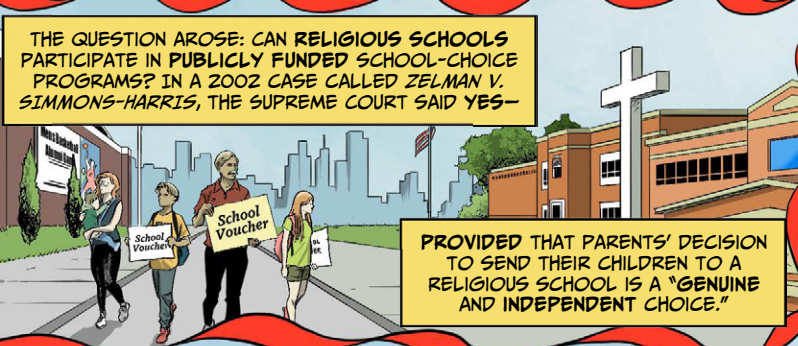
MEANWHILE, THE FACE OF EDUCATION HAS CHANGED RADICALLY: FROM NO PUBLIC SCHOOLS, TO UNABASHEDLY RELIGIOUS PUBLIC SCHOOLS, TO TODAY'S SECULAR PUBLIC SCHOOLS—REQUIRED BY COURTS TO AVOID RELIGIOUS INSTRUCTION ON CONSTITUTIONAL GROUNDS.



IN RECENT DECADES—AND PARTICULARLY IN THE WAKE OF THE 2020 COVID-19 PANDEMIC—THE SCHOOL-CHOICE MOVEMENT HAS TAKEN OFF, ALLOWING A GROWING NUMBER OF FAMILIES TO CHOOSE AMONG AN ARRAY OF PUBLIC AND PRIVATE EDUCATIONAL OPTIONS.



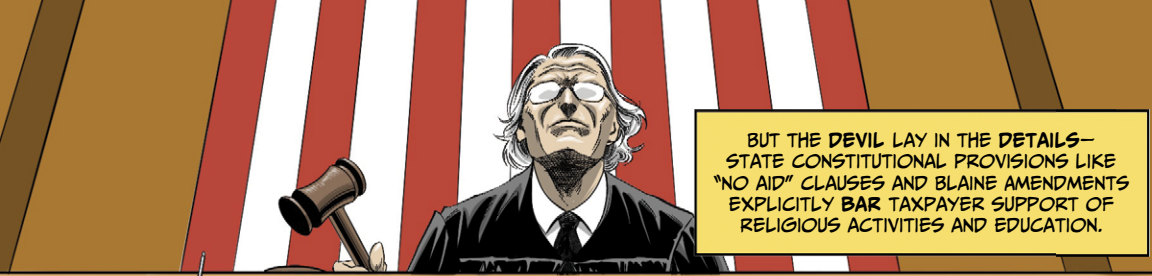
THE QUESTION AROSE: CAN RELIGIOUS SCHOOLS PARTICIPATE IN PUBLICLY FUNDED SCHOOL-CHOICE PROGRAMS? IN A 2002 CASE CALLED *ZELMAN V. SIMMONS-HARRIS*, THE SUPREME COURT SAID YES—



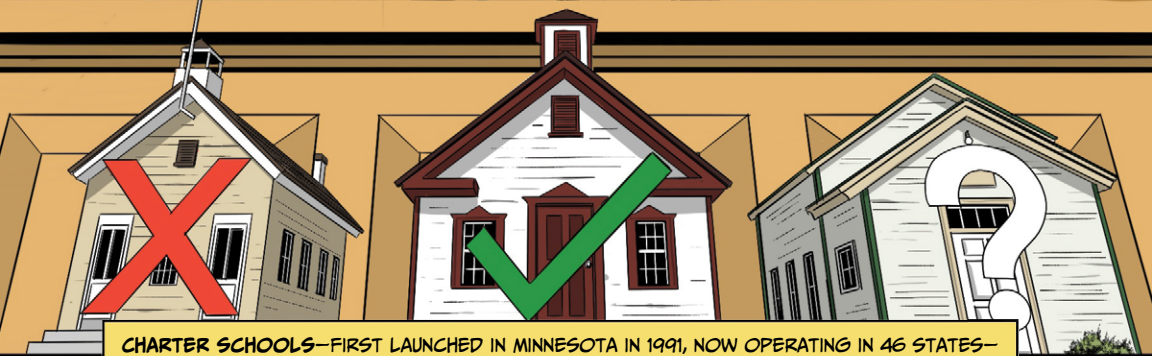
PROVIDED THAT PARENTS' DECISION TO SEND THEIR CHILDREN TO A RELIGIOUS SCHOOL IS A "GENUINE AND INDEPENDENT CHOICE."

THAT DECISION WAS HARDLY SURPRISING, GIVEN THAT TAX DOLLARS HAD LONG BEEN SUPPORTING RELIGIOUS HOSPITALS, DAY CARE FACILITIES, AND EVEN HIGHER EDUCATION AT OPENLY RELIGIOUS SCHOOLS SUCH AS THE UNIVERSITY OF NOTRE DAME, VIA PELL GRANTS AND THE GI BILL.

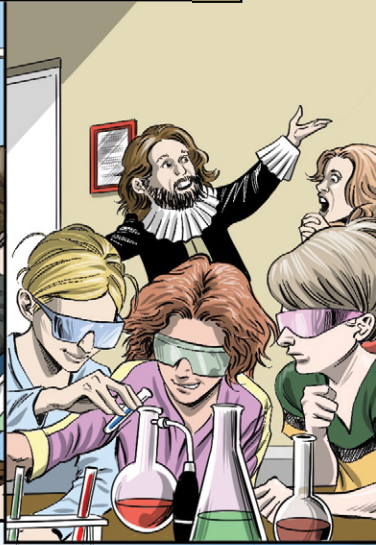
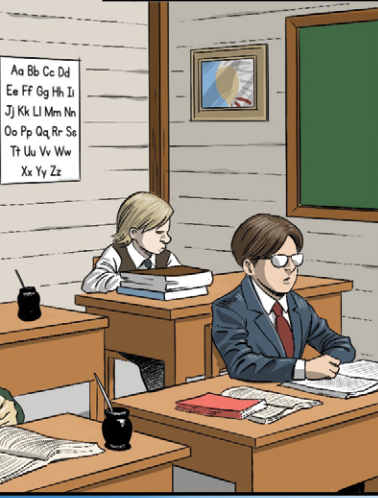




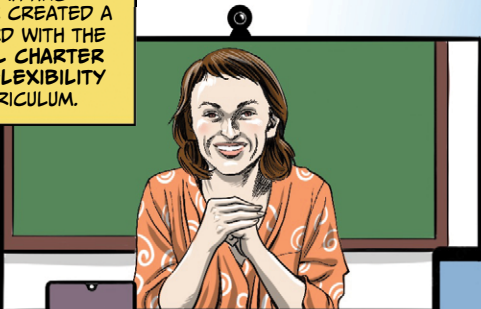
BUT THE DEVIL LAY IN THE DETAILS—
STATE CONSTITUTIONAL PROVISIONS LIKE
“NO AID” CLAUSES AND BLAINE AMENDMENTS
EXPLICITLY BAR TAXPAYER SUPPORT OF
RELIGIOUS ACTIVITIES AND EDUCATION.



CHARTER SCHOOLS—FIRST LAUNCHED IN MINNESOTA IN 1991, NOW OPERATING IN 46 STATES—
ARE PUBLICLY FUNDED BUT INDEPENDENTLY RUN, GIVING THEM FLEXIBILITY TO OPERATE
DIFFERENTLY THAN TRADITIONAL SCHOOLS WHILE EXPANDING PARENTAL CHOICE.



OKLAHOMA ENACTED A LAW PERMITTING
CHARTER SCHOOLS IN 1999. IT LATER CREATED A
STATEWIDE CHARTER SCHOOL BOARD WITH THE
SOLE POWER TO SPONSOR VIRTUAL CHARTER
SCHOOLS THAT HAVE ENORMOUS FLEXIBILITY
REGARDING PEDAGOGY AND CURRICULUM.



IN 2023, THE CATHOLIC ARCHDIOCESE OF OKLAHOMA CITY AND THE DIOCESE OF TULSA FORMED THE ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL AND APPLIED TO JOIN OKLAHOMA'S CHARTER SCHOOL PROGRAM—MAKING CLEAR THAT THE NEW SCHOOL WOULD INTEGRATE RELIGION INTO ITS PROPOSED CURRICULUM.



CONCERNED THAT EXCLUDING ST. ISIDORE FROM THE CHARTER SCHOOL PROGRAM MIGHT AMOUNT TO UNCONSTITUTIONAL ANTI-RELIGIOUS DISCRIMINATION, THE BOARD APPROVED THE APPLICATION.



OKLAHOMA'S ATTORNEY GENERAL FILED SUIT THE NEXT DAY—ARGUING THAT ALLOWING ST. ISIDORE TO PROVIDE RELIGIOUS EDUCATION WITH PUBLIC DOLLARS WOULD VIOLATE STATE LAW, THE OKLAHOMA CONSTITUTION, AND THE US CONSTITUTION. THE OKLAHOMA SUPREME COURT AGREED.

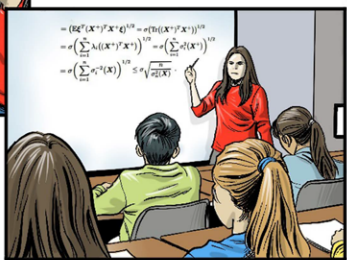
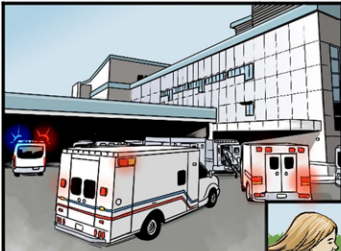
ST. ISIDORE AND THE STATEWIDE CHARTER SCHOOL BOARD APPEALED TO THE US SUPREME COURT, ARGUING THAT RELIGIOUS CHARTER SCHOOLS ARE INDEED CONSTITUTIONAL, AND THAT IT WOULD BE UNCONSTITUTIONAL RELIGIOUS DISCRIMINATION TO EXCLUDE ST. ISIDORE FROM THE STATE-FUNDED PROGRAM.



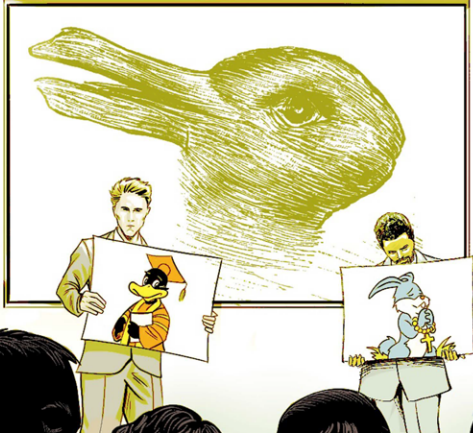
AT THE SUPREME COURT, THE OPPOSING PARTIES PRESENTED THE JUSTICES WITH TWO RADICALLY DIFFERENT TAKES. IN ONE TELLING, ST. ISIDORE IS AN UNABASHEDLY RELIGIOUS INSTITUTION THAT SEEKS TO INDOCTRINATE CHILDREN UNDER THE AUSPICES OF EDUCATING THEM.



IN THE OTHER TELLING, ST. ISIDORE IS JUST ANOTHER ONE OF THE COUNTLESS PRIVATE ENTITIES THAT STATES ROUTINELY CONTRACT WITH TO PROVIDE VARIOUS PUBLIC SERVICES, INCLUDING HEALTH CARE, CHILD CARE—AND, YES, EDUCATION.

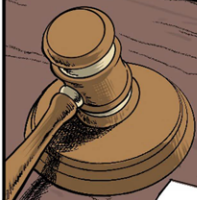


THE PARTIES ESSENTIALLY PRESENTED THE JUSTICES WITH A LEGAL OPTICAL ILLUSION—TWO COMPLETELY DIFFERENT REALITIES IN THE SAME SET OF FACTS.



WHICH ONE YOU SEE—A SCHOOL THAT HAPPENS TO BE RUN BY A RELIGIOUS INSTITUTION, OR A RELIGIOUS INSTITUTION THAT HAPPENS TO PROVIDE EDUCATION—DETERMINES THE OUTCOME OF THE CASE.

AND HERE IS LITERALLY EVERYTHING THE SUPREME COURT HAD TO SAY ABOUT THIS CASE.



SUPREME COURT OF THE UNITED STATES
ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL
v.
GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA
PER CURIAM, (May 22, 2020)
The judgment is affirmed by an equally divided Court.
JUSTICE BARRETT took no part in the consideration or decision of these cases.

IF YOU THINK EVERYTHING ABOUT THIS CASE BESIDES THE SPECIFIC OUTCOME FOR ST. ISIDORE REMAINS VERY MUCH IN QUESTION—including whether the result might have been different had justice barrett not recused—you're right!



Martin

12

United States

★ ★ ★ ★ ★ ★ ★ ★

Laura Bondank-Harmon

JUST OUTSIDE OF ATLANTA
SITS A QUIET SUBURBAN
HOME BELONGING TO A
FAMILY OF THREE:

WHEN THE FAMILY WENT TO
SLEEP ON THE NIGHT OF
OCTOBER 18, 2017, THEY
NEVER EXPECTED THEIR
LIVES TO CHANGE FOREVER.

HILLIARD "TOI" CLIATT

CURTRINA "TRINA" MARTIN

AND TRINA'S SEVEN-
YEAR-OLD SON, G.W.

think a
big
boom
is much
a little
BOY

IN THE EARLY HOURS OF THE MORNING, A SIX-AGENT FBI SWAT TEAM **SMASHED** IN THE FRONT
DOOR, **DETONATED** A FLASH-BANG GRENADE, AND **PROCEEDED** TO RAID THE HOUSE.

KRANK!

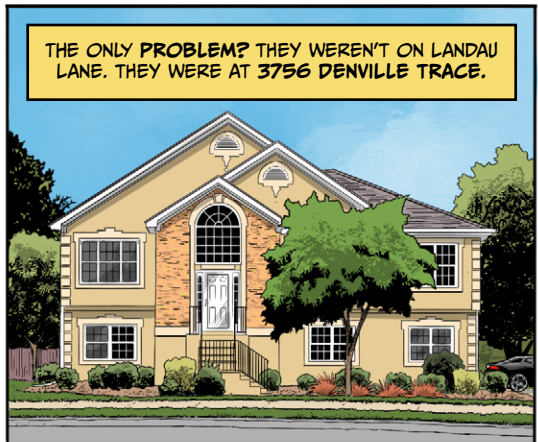
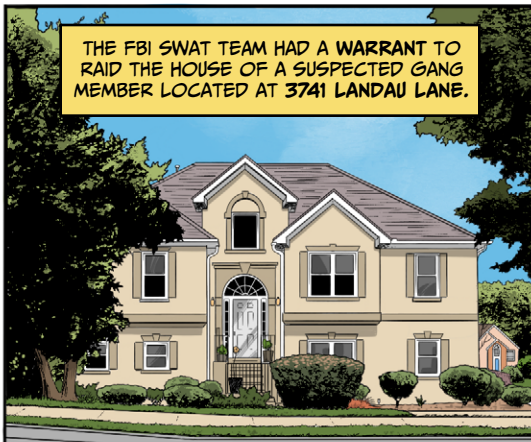
BANG!

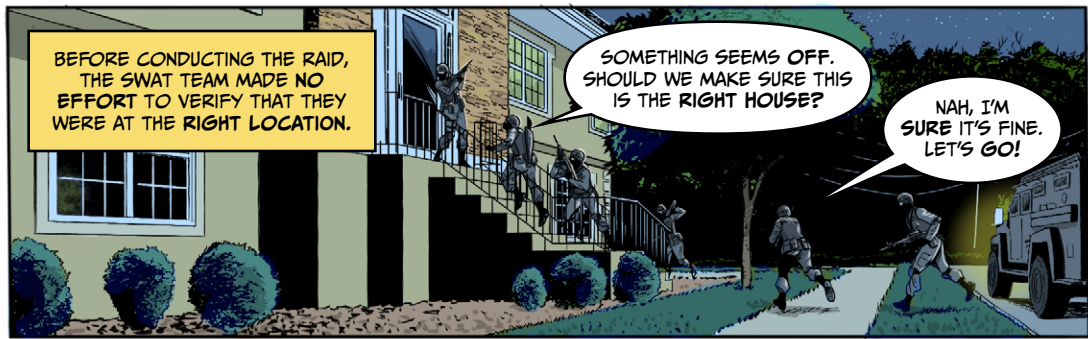
TERRIFIED THAT
CRIMINALS HAD BROKEN
INTO THEIR HOME, THE
FAMILY JUMPED INTO
ACTION TO PROTECT
THEMSELVES.

WE NEED
TO HIDE!

I NEED TO
GET MY SON!

MOMMY?

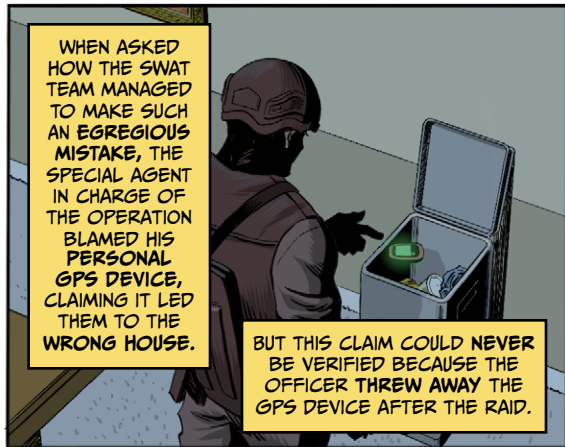




BEFORE CONDUCTING THE RAID, THE SWAT TEAM MADE NO EFFORT TO VERIFY THAT THEY WERE AT THE RIGHT LOCATION.

SOMETHING SEEMS OFF. SHOULD WE MAKE SURE THIS IS THE RIGHT HOUSE?

NAH, I'M SURE IT'S FINE. LET'S GO!



WHEN ASKED HOW THE SWAT TEAM MANAGED TO MAKE SUCH AN EGREGIOUS MISTAKE, THE SPECIAL AGENT IN CHARGE OF THE OPERATION BLAMED HIS PERSONAL GPS DEVICE, CLAIMING IT LED THEM TO THE WRONG HOUSE.

BUT THIS CLAIM COULD NEVER BE VERIFIED BECAUSE THE OFFICER THREW AWAY THE GPS DEVICE AFTER THE RAID.



AFTER REALIZING THEIR MISTAKE, THE SWAT TEAM WENT DOWN THE BLOCK TO RAID THE CORRECT HOUSE, LEAVING TRINA AND HER FAMILY CONFUSED AND TERRORIZED.

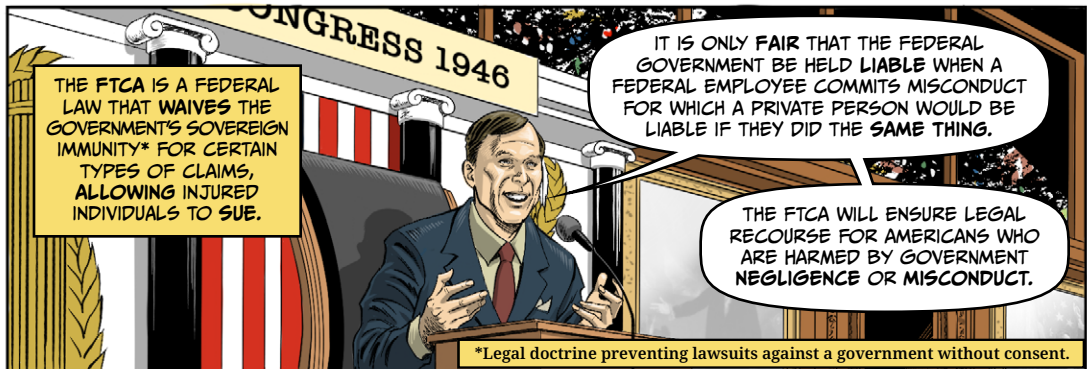
WHOOPS! LET'S TRY THAT AGAIN.



ALTHOUGH THE SPECIAL AGENT IN CHARGE OF THE OPERATION DID EVENTUALLY RETURN TO APOLOGIZE, TOI, TRINA, AND G.W. WERE LEFT WITH MORE QUESTIONS THAN ANSWERS.

SORRY ABOUT ALL THE COMMOTION. HERE'S MY SUPERVISOR'S NUMBER.

THE RAID CAUSED EXTENSIVE INJURIES AND PROPERTY DAMAGE. IN AN EFFORT TO RECOVER FOR AT LEAST SOME OF THOSE LOSSES, TRINA AND TOI SUED THE UNITED STATES UNDER THE FEDERAL TORT CLAIMS ACT (FTCA).



THE FTCA IS A FEDERAL LAW THAT WAIVES THE GOVERNMENT'S SOVEREIGN IMMUNITY* FOR CERTAIN TYPES OF CLAIMS, ALLOWING INJURED INDIVIDUALS TO SUE.

IT IS ONLY FAIR THAT THE FEDERAL GOVERNMENT BE HELD LIABLE WHEN A FEDERAL EMPLOYEE COMMITS MISCONDUCT FOR WHICH A PRIVATE PERSON WOULD BE LIABLE IF THEY DID THE SAME THING.

THE FTCA WILL ENSURE LEGAL RECOURSE FOR AMERICANS WHO ARE HARMED BY GOVERNMENT NEGLIGENCE OR MISCONDUCT.

*Legal doctrine preventing lawsuits against a government without consent.

THE FTCA ALLOWS INDIVIDUALS TO **SUE** THE FEDERAL GOVERNMENT FOR **HARMS** COMMITTED BY **FEDERAL EMPLOYEES** IN THE COURSE OF THEIR EMPLOYMENT.

THREE POINTS!
I LOVE DELIVERING MAIL.

HEY! THAT'S
MY STUFF!

BUT THE GOVERNMENT WILL OFTEN TRY TO **BAR** A PLAINTIFF'S LAWSUIT USING **EXCEPTIONS** UNDER THE FTCA...

...LIKE THE **DISCRETIONARY FUNCTION EXCEPTION (DFE)**, WHICH ENDS ANY SUIT IF THE GOVERNMENT EMPLOYEE WAS ENTITLED USE TO THEIR DISCRETION WHEN THEY HARMED THE PLAINTIFF.

I EXERCISED MY **DISCRETION** IN DELIVERING THE MAIL, DID I NOT?

THE USPS
HANDBOOK
INSTRUCTS
YOU TO AVOID
THROWING
THE MAIL...

...SO YOUR
DISCRETION
DOESN'T
INCLUDE
PLAYING
BASKETBALL
WITH THE
PACKAGES.
THE DFE
DOESN'T
APPLY.

BUT GETTING PAST THE DFE IS **NOT ALWAYS** A STRAIGHTFORWARD PROCESS AS LOWER COURTS FREQUENTLY **DISAGREE** ABOUT HOW AND WHEN THIS EXCEPTION SHOULD APPLY.

SOME COURTS HAVE HELD THAT THE DFE DOES NOT PROTECT CONDUCT MARKED BY **CARELESSNESS** OR **LAZINESS**.

SHOULD WE
HAVE SEARCHED
THESE GUYS?

THIS IS A
SUPER-SECURE
PRISON. I DON'T
WANT TO WASTE TIME
ON A **POINTLESS**
SEARCH.

SOME COURTS REFUSE TO APPLY THE EXCEPTION WHEN **FEDERAL LAW ENFORCEMENT OFFICERS VIOLATE A PLAINTIFF'S CONSTITUTIONAL RIGHTS**.

HEY! YOU JUST CAN'T COME
HERE WITHOUT A **WARRANT!**

AND SOME COURTS HAVE SUGGESTED THAT THE DFE DOESN'T APPLY TO **MINISTERIAL TASKS** SUCH AS **TRANSPORTING SUSPECTS TO JAIL**.

I SAID **DON'T TEXT AND DRIVE!** ESPECIALLY WHEN WE'RE TAKING SOMEONE TO **JAIL!**

I WASN'T
TEXTING. I
WAS WATCHING
TIKTOK.

WHEN THE US COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HEARD THIS CASE, IT EMPLOYED ITS OWN APPROACH TO THE DFE.

THERE IS A **LAW ENFORCEMENT PROVISIO** IN THE FTCA THAT LETS PLAINTIFFS **SUE POLICE** FOR THIS KIND OF MISCONDUCT. WE FIND THE **PROVISIO APPLIES** TO THE DFE, SO WE'LL MOVE ON TO THE **MERITS**.

IT CHOSE TO **BALANCE A PLAINTIFF-FRIENDLY APPROACH** TO THE DFE WITH A **GOVERNMENT-FRIENDLY MERITS ANALYSIS**. IT DETERMINED THAT THE DFE DOES NOT **BAR PLAINTIFFS' CLAIMS**, BUT THAT THE **CONSTITUTION'S SUPREMACY CLAUSE*** PRECLUDED LIABILITY.

ON THE **MERITS**, WE FIND THAT THE **SWAT TEAM'S ACTIONS FURTHERED FEDERAL POLICY** AND **COMPLIED WITH FEDERAL LAW**. PLAINTIFFS' CLAIMS ARE THUS **BARRED BY THE SUPREMACY CLAUSE**.

*The Supremacy Clause states that federal law precludes state law when federal and state laws conflict.

THE SUPREME COURT DID NOT AGREE WITH THE ELEVENTH CIRCUIT'S UNUSUAL APPROACH TO THE FTCA.

FIRST, IT HELD THAT THE LOWER COURT MISREAD THE FTCA BY USING THE LAW ENFORCEMENT PROVISIO TO SHIELD PLAINTIFFS' CLAIMS FROM THE DISCRETIONARY-FUNCTION EXCEPTION.

THE LAW ENFORCEMENT PROVISIO DOES NOT APPLY TO THE DISCRETIONARY FUNCTION EXCEPTION. CONGRESS INTENDED FOR THE PROVISIO TO APPLY ONLY TO THE FTCA'S INTENTIONAL TORT EXCEPTION, NOT ANY OF ITS OTHER EXCEPTIONS.

NEXT, THE COURT HELD THAT THE SUPREMACY CLAUSE DOES NOT PRECLUDE PLAINTIFFS' CLAIMS BECAUSE THE FTCA DOES NOT CONFLICT WITH STATE LAW.

GEORGIA LAW WOULD PERMIT A HOMEOWNER TO SUE A PRIVATE PERSON FOR DAMAGES IF THAT PERSON INTENTIONALLY OR NEGLIGENTLY RAIDED HIS HOUSE AND ASSAULTED HIM.

THE FTCA IS THE "SUPREME" FEDERAL LAW, AND IT INSTRUCTS COURTS TO APPLY THOSE SAME STATE RULES TO DECIDE WHETHER THE UNITED STATES IS LIABLE, SO THERE IS NO DISCORD BETWEEN FEDERAL AND STATE LAW.

THIS DECISION PROVIDES LOWER COURTS WITH SOME CLARITY REGARDING THE FTCA, BUT FAILS TO ANSWER ONE OF THE BIGGEST REMAINING QUESTIONS: DOES THE DFE BAR TRINA AND TOI'S CLAIMS?

IMPORTANT QUESTIONS SURROUND WHETHER AND UNDER WHAT CIRCUMSTANCES THE DISCRETIONARY-FUNCTION EXCEPTION MAY FORECLOSE A SUIT LIKE THIS ONE. BEFORE ADDRESSING THEM, WE WOULD BENEFIT FROM THE ELEVENTH CIRCUIT'S CAREFUL REEXAMINATION OF THIS CASE IN THE FIRST INSTANCE.

I CONCUR.

THE ELEVENTH CIRCUIT MUST NOW CONSIDER ON REMAND WHETHER THE FTCA'S DISCRETIONARY-FUNCTION EXCEPTION BARS PLAINTIFFS' CLAIMS. THAT SAID, THERE IS REASON TO THINK THIS EXCEPTION MAY NOT APPLY.

IT HAS BEEN EIGHT YEARS SINCE GOVERNMENT AGENTS BROKE INTO TRINA AND TOI'S HOME AND TERRORIZED THEIR FAMILY.

WHILE THE SUPREME COURT'S DECISION ALLOWS THEIR FIGHT TO CONTINUE, IT LEAVES IN PLACE A CLOUD OF UNCERTAINTY SURROUNDING THE PATH TO JUSTICE.



TO BE CONTINUED...

FSC

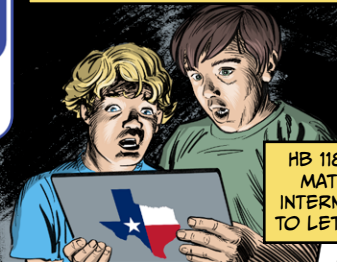


Paxton



Dan Greenberg

TWO YEARS AGO, TEXAS PASSED HB 1181—
A STATUTE TO PREVENT CHILDREN FROM
SEEING PORNOGRAPHY ON THE INTERNET.



HB 1181 REQUIRED DISTRIBUTORS OF "SEXUAL
MATERIAL HARMFUL TO MINORS" OVER THE
INTERNET TO VERIFY EACH USER'S AGE, SO AS
TO LET ADULTS HAVE ACCESS BUT BLOCK KIDS.

THE FREE SPEECH COALITION, REPRESENTING ONLINE
PUBLISHERS, SUED TEXAS. THEY ARGUED THAT HB 1181 WAS
UNCONSTITUTIONAL BECAUSE IT VIOLATED THE FIRST AMENDMENT.



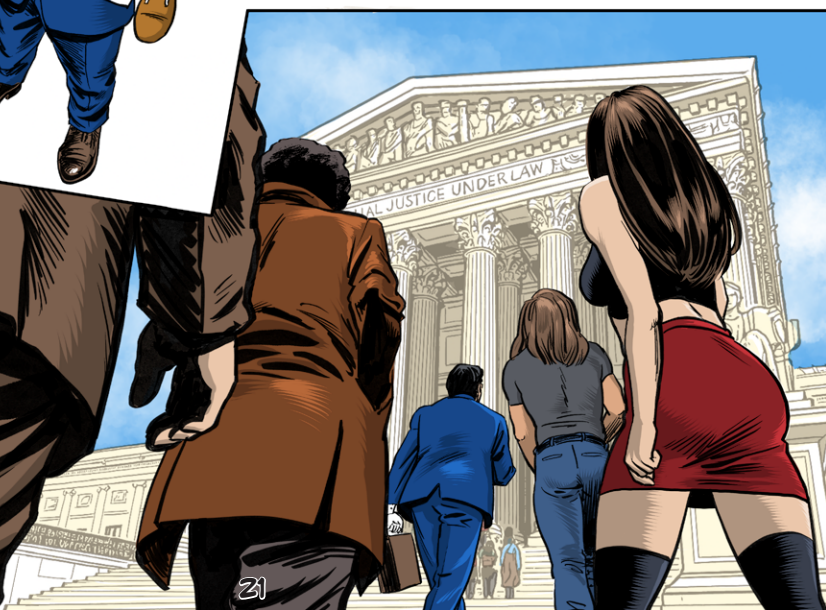
JUST ONE DAY BEFORE HB 1181 WOULD
HAVE TAKEN EFFECT, A DISTRICT JUDGE
ANNOUNCED THAT THE LAW WAS
UNCONSTITUTIONAL AND ORDERED TEXAS
NOT TO ENFORCE IT.



BUT THE FIFTH
CIRCUIT
REVERSED THAT
DECISION AFTER
TEXAS APPEALED,
RULING HB 1181
CONSTITUTIONAL
AND ALLOWING
THE AGE
VERIFICATION
MECHANISM TO
GO INTO EFFECT.



HB 1181'S CHALLENGERS
THEN APPEALED TO
THE SUPREME COURT.
THE NATION'S HIGHEST
COURT WOULD HAVE TO
DECIDE WHETHER THE
STATUTE FURTHERED
OR FRUSTRATED THE
FIRST AMENDMENT.



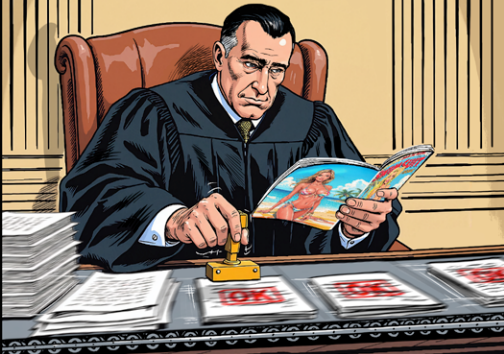


WHY DID THE TWO COURTS DISAGREE ON WHETHER HB 1181 WAS UNCONSTITUTIONAL? BECAUSE THEY USED **TWO DIFFERENT LEGAL TESTS** TO EVALUATE WHETHER THE LAW VIOLATED THE FIRST AMENDMENT, AND DIFFERENT TESTS YIELD DIFFERENT RESULTS. THE **EASIEST** TEST TO PASS IS THE **RATIONAL BASIS TEST**, AND THE **HARDEST** TEST IS **STRICT SCRUTINY**.



THE COURT OF APPEALS APPLIED **RATIONAL BASIS REVIEW**, WHICH ASKS: IS THIS LAW **RATIONALLY RELATED** TO A **LEGITIMATE GOVERNMENT INTEREST**?

**RATIONAL BASIS
REVIEW
DEPARTMENT**



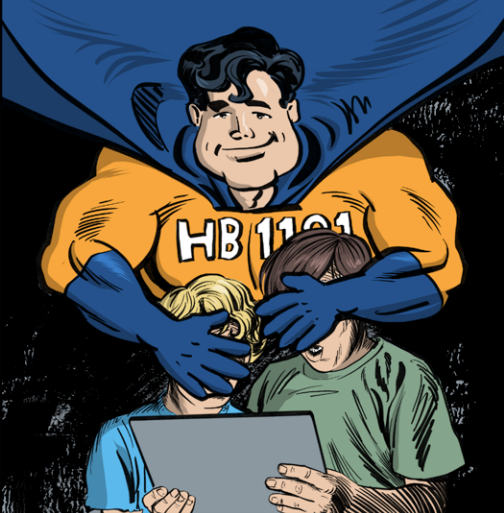
THE APPEALS COURT SAW HB 1181 AS **REGULATING MINORS' ACCESS TO PORNOGRAPHY**. PRECEDENT SUGGESTS THAT REGULATING CONTENT THAT'S **OBSCENE FOR MINORS** REQUIRES ONLY **MINIMAL SCRUTINY**—WHICH LED THE COURT OF APPEALS TO APPLY THE **RATIONAL BASIS REVIEW**...

THE DISTRICT COURT APPLIED THE **STRICT SCRUTINY TEST**, WHICH REQUIRES THE GOVERNMENT TO PASS **THREE DIFFERENT SUBTESTS**—AND IF IT CAN'T PASS ALL THREE OF THEM, IT **FAILS**.



THE DISTRICT COURT SAW HB 1181 AS **RESTRICTING ADULTS' ACCESS TO CERTAIN KINDS OF CONTENT**. IT IS ESTABLISHED PRECEDENT THAT REGULATING SPEECH BASED ON ITS **CONTENT** IMPINGES ON A **FUNDAMENTAL CONSTITUTIONAL RIGHT**. AND THAT CALLS FOR **STRICT SCRUTINY**...

...SO IT DETERMINED THAT HB 1181 ONLY REGULATES SPEECH THAT GOES TO MINORS THAT IS **OBSCENE FOR MINORS**. PROTECTING MINORS IS A **LEGITIMATE STATE INTEREST**, SO THE STATUTE **PASSES THE RATIONAL BASIS TEST**. **THUS, IT'S GOOD LAW.**



...SO IT DECIDED THAT THE STATUTE GOES TOO FAR: IT **HAMPERS ADULT ACCESS TO PORNOGRAPHY**, AND IT'S MUCH MORE RESTRICTIVE THAN (FOR INSTANCE) REQUIRING **FILTERING SOFTWARE**. HB 1181 THEREFORE **FAILS TO PASS STRICT SCRUTINY**, AND IS **UNCONSTITUTIONAL** AS A RESULT.



ALMOST ANY LAW CAN PASS THE RATIONAL BASIS TEST, BECAUSE ALMOST ANYTHING QUALIFIES AS A LEGITIMATE GOVERNMENT INTEREST.

BUT THE STRICT SCRUTINY TEST IS VERY HARD TO PASS. VERY FEW LAWS EARN THIS JUDICIAL GOLD MEDAL.

WHICH TEST WOULD THE SUPREME COURT CHOOSE FOR HB 1181? AT ORAL ARGUMENT, IT WAS UNCLEAR.

SOME JUSTICES APPEARED UNDECIDED ABOUT WHETHER THE SAME LEVEL OF SCRUTINY SHOULD BE APPLIED TO AGE-CHECKING IN DIFFERENT CONTEXTS.

THE QUESTION IS: WHAT LEVEL OF SCRUTINY, CORRECT?

IF THERE'S AN AGE VERIFICATION REQUIREMENT ABOUT PORN MAGAZINES, IS THAT ALSO SUBJECT TO STRICT SCRUTINY?

EXPLAIN TO ME WHY THE BARRIER IS DIFFERENT ONLINE THAN IN A BRICK-AND-MORTAR SETTING.

OTHERS WONDERED IF NEW TECHNOLOGIES IMPLY THAT THE LAW SHOULD APPLY DIFFERENTLY TODAY.

ONE OF THE THINGS THAT'S VERY STRIKING ABOUT THE CASE IS THE DRAMATIC CHANGE IN THE TECHNOLOGY... TO ACCESS PORNOGRAPHY.

AGE VERIFICATION TECHNOLOGY HAS BECOME CHEAPER AND MORE EFFECTIVE IN PROVIDING CIRCUMVENTION. DO YOU DISPUTE THAT?

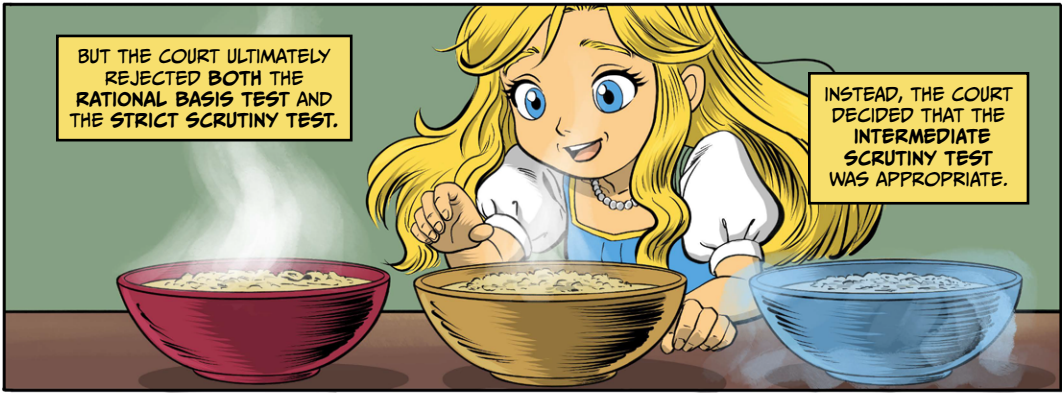
COME ON, BE REAL! THERE'S A HUGE VOLUME OF EVIDENCE THAT FILTERING DOESN'T WORK.

AND OTHERS SUGGESTED THAT HB 1181 MIGHT INTERFERE WITH THE RIGHTS OF ADULTS, NOT JUST MINORS.

WE'RE IN AN ENTIRELY DIFFERENT WORLD.

FINE. WHATEVER YOU DO WITH MINORS, WHAT WE ARE SUGGESTING IS THAT REQUIRING ADULTS TO DO SOMETHING TO ACCESS THIS MATERIAL BURDENS OUR FIRST AMENDMENT RIGHT.

IT DOES ALSO IMPACT HOW WE THINK ABOUT THE BURDENS PLACED ON ADULTS TO ENSURE THAT MINORS DON'T HAVE ACCESS.




BUT THE COURT ULTIMATELY REJECTED BOTH THE RATIONAL BASIS TEST AND THE STRICT SCRUTINY TEST.

INSTEAD, THE COURT DECIDED THAT THE INTERMEDIATE SCRUTINY TEST WAS APPROPRIATE.

THE COURT'S OPINION, WRITTEN BY JUSTICE CLARENCE THOMAS, DESCRIBED TWO PRINCIPLES THAT GUIDE OBSCENITY LAW.

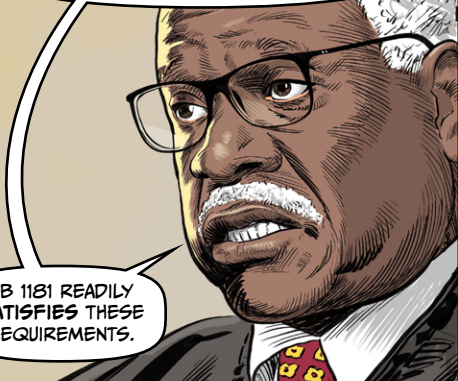
A STATE MAY NOT PROHIBIT ADULTS FROM ACCESSING CONTENT THAT IS OBSCENE ONLY TO MINORS, BUT IT MAY ENACT LAWS TO PREVENT MINORS FROM ACCESSING SUCH CONTENT.



IT REASONED THAT—BECAUSE HB 1181 REGULATES "DISTRIBUTION TO MINORS OF MATERIAL OBSCENE FOR MINORS"—INTERMEDIATE SCRUTINY IS APPROPRIATE BECAUSE THE LAW'S EFFECTS ON ADULTS ARE MERELY "INCIDENTAL."

THE COURT DECIDED THAT HB 1181'S BURDENS ON ADULTS ARE INCIDENTAL BECAUSE THERE IS NO FIRST AMENDMENT RIGHT TO AVOID AGE VERIFICATION.


A STATUTE **SURVIVES** INTERMEDIATE SCRUTINY IF IT ADVANCES IMPORTANT GOVERNMENTAL INTERESTS UNRELATED TO THE SUPPRESSION OF FREE SPEECH AND DOES NOT BURDEN SUBSTANTIALLY MORE SPEECH THAN NECESSARY TO FURTHER THOSE INTERESTS.



HB 1181 READILY SATISFIES THESE REQUIREMENTS.

THE COURT EXPLAINED THAT A MEASURE FOCUSING ON PARTICULAR "IDEAS OR VIEWPOINTS" WOULD DESERVE A HIGHER LEVEL OF SCRUTINY.

ULTIMATELY, THE COURT'S OPINION IS A BALANCING ACT.



THIS DECISION MAKES IT EASIER FOR PARENTS TO KEEP KIDS AWAY FROM PORN, BUT IT ALSO MAKES IT EASIER FOR GOVERNMENT TO KEEP ADULTS AWAY FROM PORN—BECAUSE ADULTS WON'T WANT TO GIVE INFORMATION TO POTENTIAL LEAKERS OR BLACKMAILERS.

MAKING THE INTERNET SAFE FOR KIDS REMAINS AN UPHILL BATTLE.



ADULT PRIVACY COULD BECOME THE FIRST CASUALTY.

Barnes

u

Felix

★ ★ ★ ★ ★ ★ ★

Mike Fox

TERRELL, TEXAS

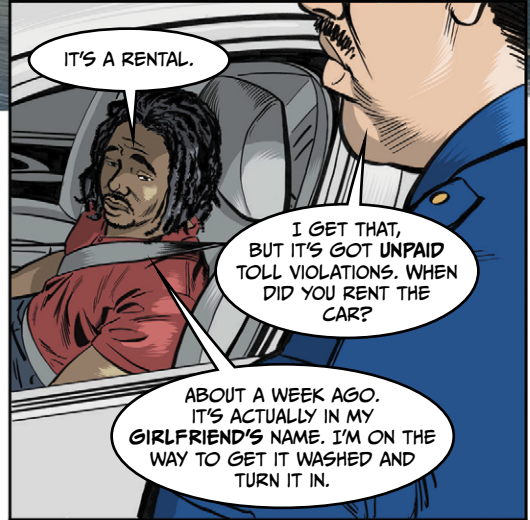
A ROUTINE TRAFFIC
STOP IS ABOUT TO
TURN DEADLY.



GOOD AFTERNOON. I'M
DEPUTY FELIX WITH THE
CONSTABLE'S OFFICE.

THE REASON
YOU'RE BEING
STOPPED TODAY IS
UNPAID TOLL VIOLATIONS
LINKED TO THIS
VEHICLE.

DO YOU HAVE YOUR
DRIVER'S LICENSE AND
INSURANCE WITH YOU?



IT'S A RENTAL.

I GET THAT,
BUT IT'S GOT UNPAID
TOLL VIOLATIONS. WHEN
DID YOU RENT THE
CAR?

ABOUT A WEEK AGO.
IT'S ACTUALLY IN MY
GIRLFRIEND'S NAME. I'M ON THE
WAY TO GET IT WASHED AND
TURN IT IN.

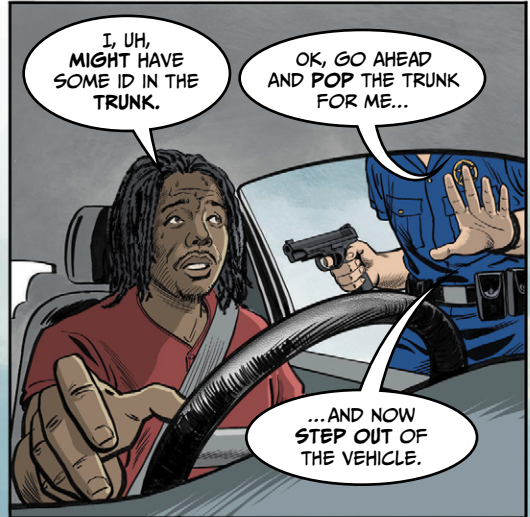


I SMELL
MARIJUANA. ANYTHING
IN THE CAR I SHOULD
KNOW ABOUT?

STOP
DIGGING
AROUND.

I'M JUST TRYING
TO FIND MY—

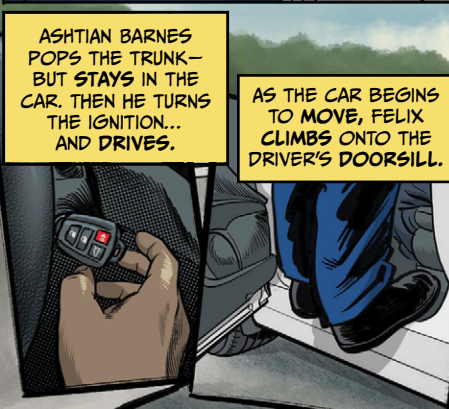
**DON'T DIG
AROUND!**



I, UH,
MIGHT HAVE
SOME ID IN THE
TRUNK.

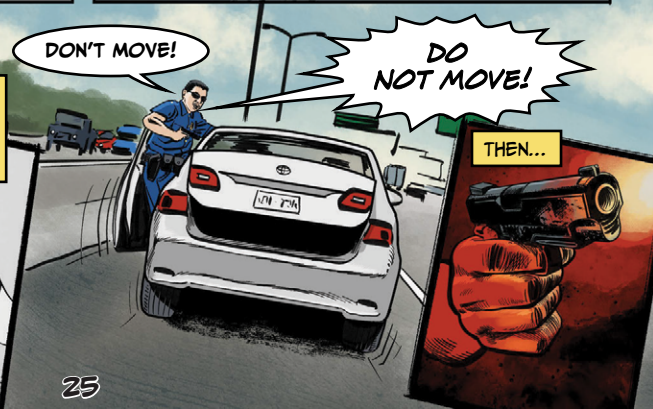
OK, GO AHEAD
AND POP THE TRUNK
FOR ME...

...AND NOW
STEP OUT OF
THE VEHICLE.



ASHTIAN BARNES
POPS THE TRUNK—
BUT STAYS IN THE
CAR. THEN HE TURNS
THE IGNITION...
AND DRIVES.

AS THE CAR BEGINS
TO MOVE, FELIX
CLIMBS ONTO THE
DRIVER'S DOORSILL.



DON'T MOVE!

**DO
NOT MOVE!**

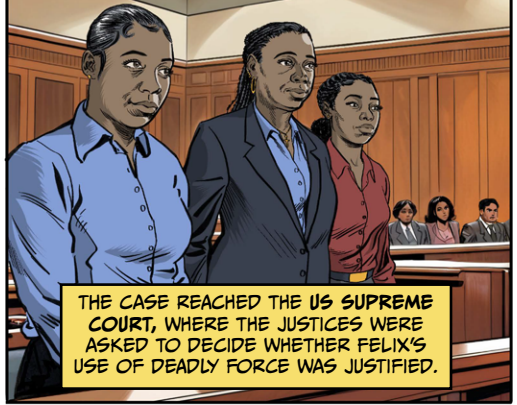
THEN...



DEPUTY FELIX SHOT AND KILLED ASHTIAN BARNES.



THE BARNES FAMILY SUED, ALLEGING THAT DEPUTY FELIX USED EXCESSIVE FORCE.



THE CASE REACHED THE US SUPREME COURT, WHERE THE JUSTICES WERE ASKED TO DECIDE WHETHER FELIX'S USE OF DEADLY FORCE WAS JUSTIFIED.

THE SPECIFIC QUESTION BEFORE THE COURT IS HOW TO ASSESS THE REASONABLENESS OF A POLICE OFFICER'S USE OF FORCE. SHOULD IT CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING FACTORS SUCH AS...

...THE NATURE OF THE OFFENSE...



...THE IMMEDIACY OF ANY THREAT...



...AND THE TACTICAL DECISIONS MADE BY THE OFFICER...



...OR SHOULD IT CONSIDER JUST THE SPLIT SECOND WHEN THE FORCE WAS USED?

THE SECOND, FOURTH, FIFTH, AND EIGHTH CIRCUITS APPLY THE SO-CALLED MOMENT OF THE THREAT RULE.

THIS TEST OFTEN FAVORS POLICE OFFICERS SINCE IT IGNORES HOW AN OFFICER'S EARLIER DECISIONS MAY HAVE CONTRIBUTED TO THE DANGER.



THE FIRST, THIRD, SIXTH, SEVENTH, NINTH, TENTH, ELEVENTH, AND DC CIRCUITS APPLY A TOTALITY OF THE CIRCUMSTANCES TEST.



THE JUSTICES REAFFIRMED THE TOTALITY OF THE CIRCUMSTANCES TEST...

THE FOURTH AMENDMENT INQUIRY INTO THE REASONABLENESS OF POLICE USE OF FORCE REQUIRES ANALYZING THE TOTALITY OF THE CIRCUMSTANCES.

BUT THE FIFTH CIRCUIT LIMITED THEIR VIEW TO THE TWO SECONDS BEFORE THE SHOOTING, AFTER FELIX HAD STEPPED ONTO THE DOORSILL OF BARNES'S CAR.

...AND REJECTED THE MOMENT OF THE THREAT RULE.

A COURT CAN'T ASSESS THE TOTALITY OF THE CIRCUMSTANCES IF IT HAS PUT ON CHRONOLOGICAL BLINDERS.

THE MOMENT OF THE THREAT RULE PREVENTS THE CONTEXT-FOCUSED ANALYSIS THIS COURT'S PRECEDENTS REQUIRE.

THE FRAMERS TASKED JURIES COMPRISED OF ORDINARY CITIZENS WITH ADJUDICATING DISPUTES BETWEEN FELLOW CITIZENS AND THEIR GOVERNMENT.

Fifth Circuit

OVERRULED!

THE SUPREME COURT'S DECISION TO ALLOW THE LAWSUIT TO PROCEED IN A LOWER COURT IS A SIGNIFICANT STEP FORWARD FOR THE BARNES FAMILY.

PERHAPS THEY WILL EVEN GET THEIR DAY IN FRONT OF A CITIZEN JURY.

BUT WHETHER THE BARNES FAMILY MAKES IT THAT FAR...

...REMAINS UNCERTAIN.



Trump
v
CASA

★ ★ ★ ★ ★
Brent Skorup

PRESIDENT DONALD TRUMP ENTERED OFFICE IN 2025 PLEDGING TO ACCELERATE DEPORTATIONS OF ILLEGAL IMMIGRANTS AND TO PREVENT MASS IMMIGRATION INTO THE UNITED STATES.

WE WILL BEGIN THE PROCESS OF RETURNING MILLIONS OF CRIMINAL ALIENS BACK TO THE PLACES FROM WHICH THEY CAME.

HE ALSO SIGNED A DAY-ONE EXECUTIVE ORDER TO STOP GRANTING CITIZENSHIP TO US-BORN CHILDREN OF ILLEGAL IMMIGRANTS. HE ENDED A PRACTICE WITH DEEP HISTORICAL ROOTS.



BIRTHRIGHT CITIZENSHIP WAS ADDED TO OUR CONSTITUTION TO REVERSE THE SUPREME COURT'S INFAMOUS 1857 DRED SCOTT DECISION, WHICH DENIED CITIZENSHIP TO ALL BLACK PEOPLE IN THE US—EVEN TO FREEDMEN AND THEIR CHILDREN.



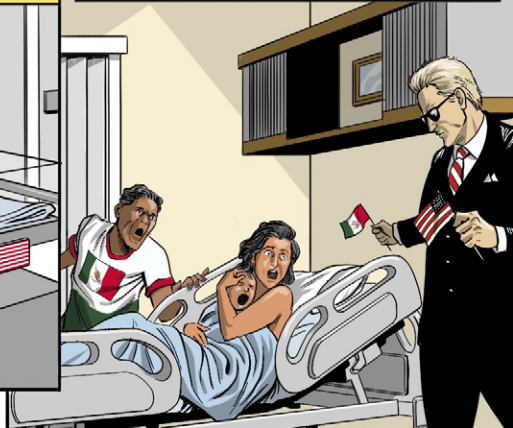
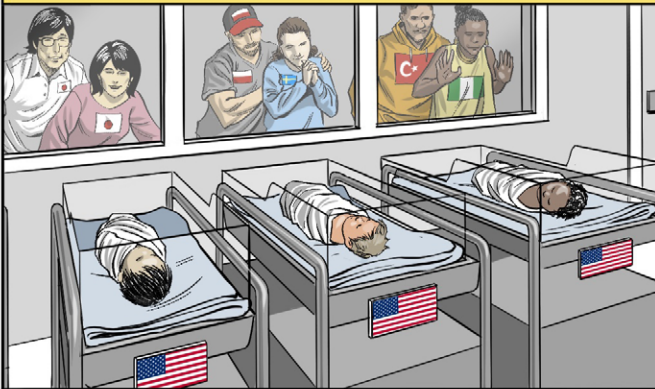
NO LONGER!

THE BIRTHRIGHT CITIZENSHIP CLAUSE, PART OF THE FOURTEENTH AMENDMENT, STATES THAT "ALL PERSONS BORN... IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES."

AND FOR GENERATIONS, US OFFICIALS HAVE RECOGNIZED NEARLY* EVERY CHILD BORN WITHIN ITS BORDERS—REGARDLESS OF PARENTS' NATIONALITY OR LEGAL STATUS—AS A CITIZEN.

*Exceptions include children of foreign diplomats.

BUT PRESIDENT TRUMP'S EXECUTIVE ORDER ABROGATES THAT LONG-STANDING INTERPRETATION, EXCLUDING CHILDREN BORN TO ILLEGAL IMMIGRANTS.



MULTIPLE LAWSUITS WERE FILED IMMEDIATELY.

IMMIGRATION LAWYER

ATTORNEYS FOR STATE GOVERNMENTS AND PREGNANT WOMEN RACED TO CHALLENGE THE ORDER...

Federal Courthouse

...CITING LIKELY HARMS.

SORRY, BUT YOUR BABY IS A NONCITIZEN AND CAN'T GET A SOCIAL SECURITY NUMBER...

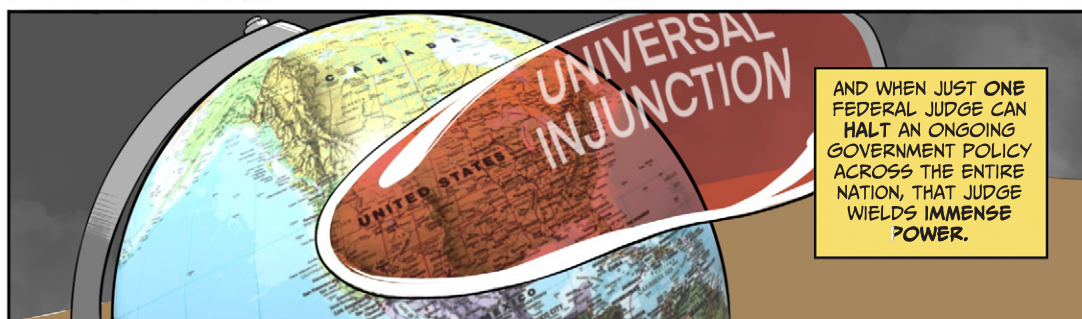
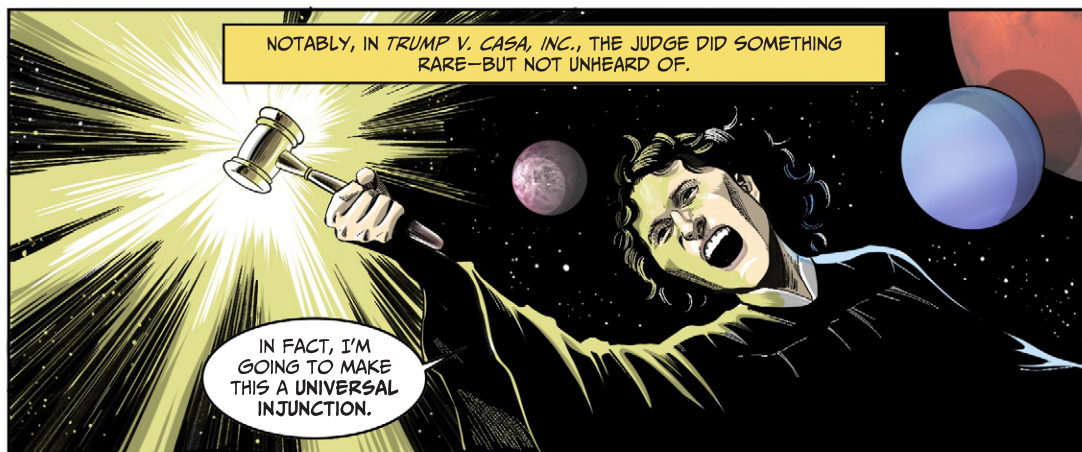
...OR MEDICAID AND FOOD STAMPS.

...OR A PASSPORT.

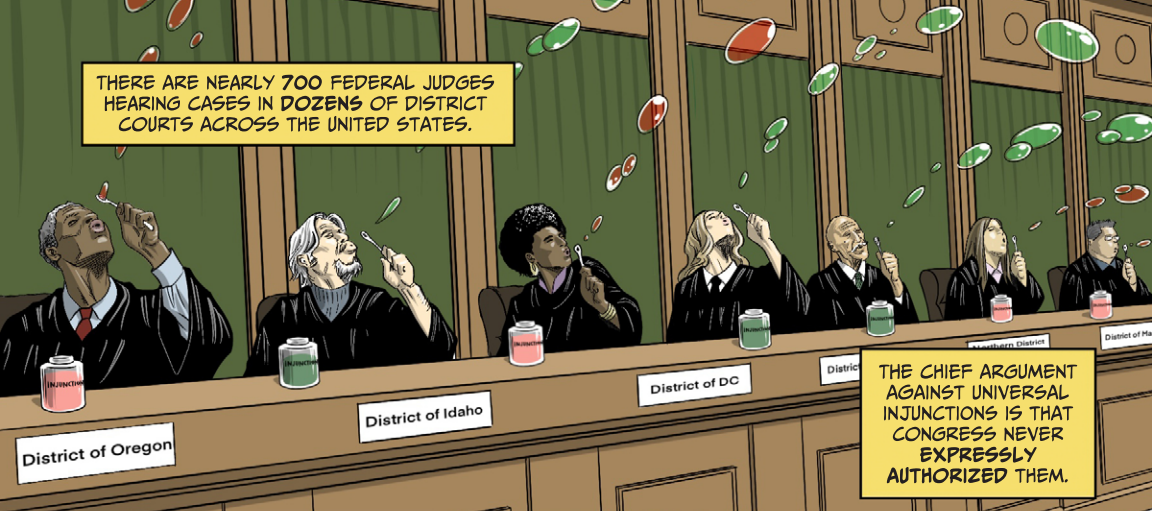
IN SOME RARE CASES, THE ORDER WOULD RENDER A NEWBORN "STATELESS"—A CITIZEN OF NO COUNTRY.

JUST LOOK AT THIS PRECEDENT, YOUR HONOR.

ABOVE ALL, THE CHALLENGERS HIGHLIGHTED BEFORE MANY JUDGES THE BREAK FROM LONG-STANDING INTERPRETATIONS OF THE FOURTEENTH AMENDMENT.



THERE ARE NEARLY 700 FEDERAL JUDGES HEARING CASES IN DOZENS OF DISTRICT COURTS ACROSS THE UNITED STATES.



UNIVERSAL
INJUNCTION

THAT QUESTION HAS NEW URGENCY. IN THE PAST 20 YEARS, DISTRICT COURTS HAVE VASTLY INCREASED THEIR ISSUANCE OF UNIVERSAL INJUNCTIONS, HALTING SWEEPING FEDERAL POLICIES.

WHETHER UNIVERSAL INJUNCTIONS ARE PROPER HAS BECOME A BITTER DEBATE—EVEN AMONG JUDGES!

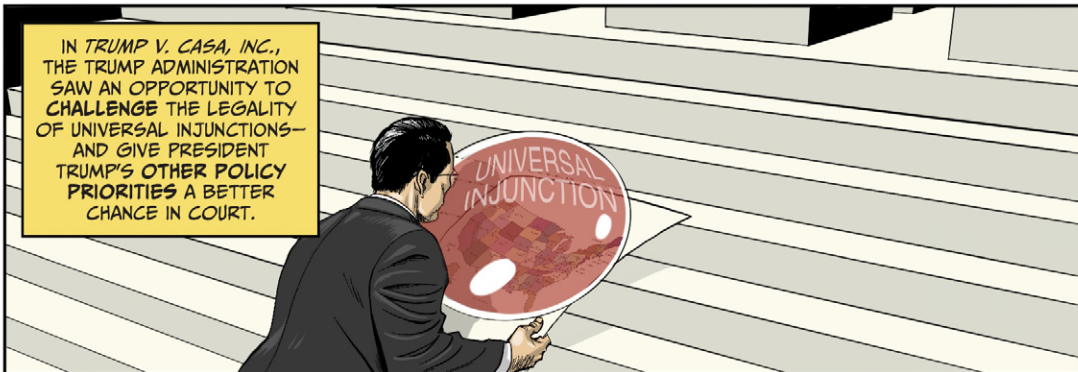
WE CANNOT ALLOW THE PRESIDENT TO ENFORCE CLEARLY UNCONSTITUTIONAL POLICIES, ESPECIALLY REGARDING FUNDAMENTAL RIGHTS LIKE BIRTHRIGHT CITIZENSHIP.

WITHOUT UNIVERSAL INJUNCTIONS, STOPPING AN UNCONSTITUTIONAL PRESIDENTIAL ORDER POTENTIALLY MEANS WAITING YEARS FOR THE SUPREME COURT TO INTERVENE—OR DECIDING HUNDREDS OF SEPARATE CASES!

BUT UNIVERSAL INJUNCTIONS SHORT-CIRCUIT THE NATION'S SYSTEM OF APPELLATE REVIEW, AND THEY IMPROPERLY ALLOW DISTRICT COURT JUDGES TO BECOME SUPERVISORS OF NATIONAL POLICY.

WHEN *TRUMP V. CASA, INC.* REACHES THE SUPREME COURT, IT IS A CASE LESS ABOUT THE POWERS OF THE PRESIDENT AND MORE ABOUT THE POWERS OF JUDGES.

IN *TRUMP V. CASA, INC.*, THE TRUMP ADMINISTRATION SAW AN OPPORTUNITY TO CHALLENGE THE LEGALITY OF UNIVERSAL INJUNCTIONS—AND GIVE PRESIDENT TRUMP'S OTHER POLICY PRIORITIES A BETTER CHANCE IN COURT.

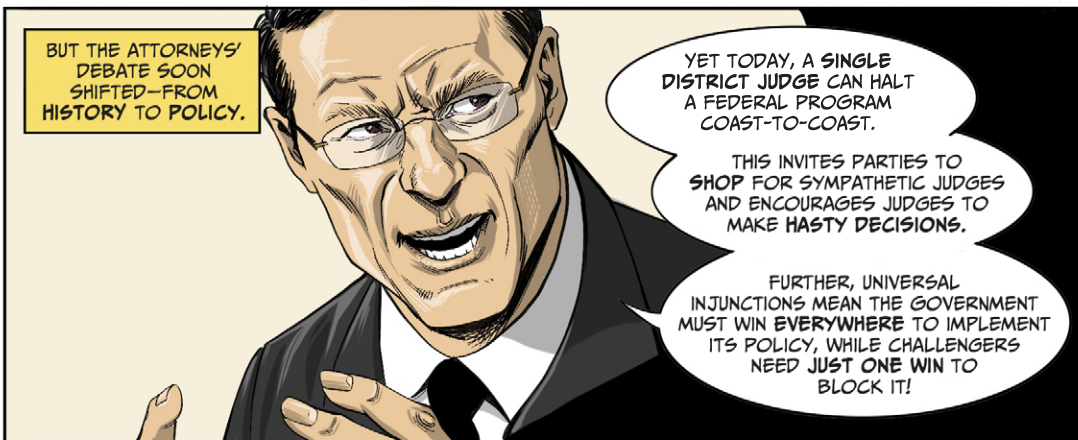


THE COURT'S POWER TO ISSUE INJUNCTIONS COMES FROM THE JUDICIARY ACT OF 1789. BUT THE ACT CONTAINS NO MENTION OF UNIVERSAL INJUNCTIONS.



AT AMERICA'S FOUNDING, COURT DECISIONS BOUND ONLY THE PARTIES BEFORE THEM—NOT OTHER PARTIES WHO HAPPENED TO BE SIMILARLY AFFECTED.

BUT THE ATTORNEYS' DEBATE SOON SHIFTED—FROM HISTORY TO POLICY.



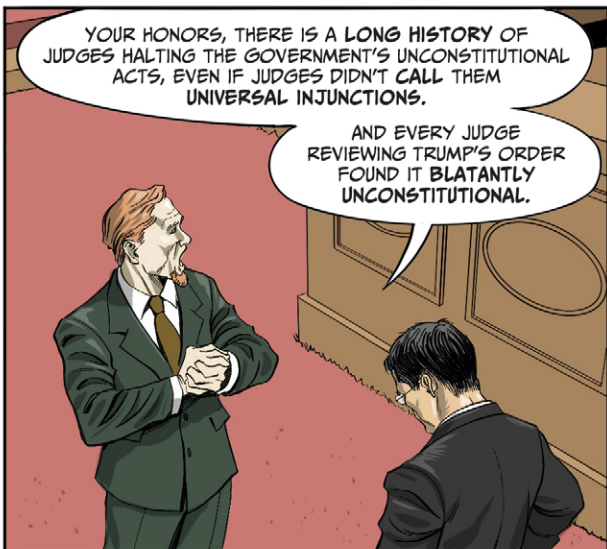
YET TODAY, A SINGLE DISTRICT JUDGE CAN HALT A FEDERAL PROGRAM COAST-TO-COAST.

THIS INVITES PARTIES TO SHOP FOR SYMPATHETIC JUDGES AND ENCOURAGES JUDGES TO MAKE HASTY DECISIONS.

FURTHER, UNIVERSAL INJUNCTIONS MEAN THE GOVERNMENT MUST WIN EVERYWHERE TO IMPLEMENT ITS POLICY, WHILE CHALLENGERS NEED JUST ONE WIN TO BLOCK IT!

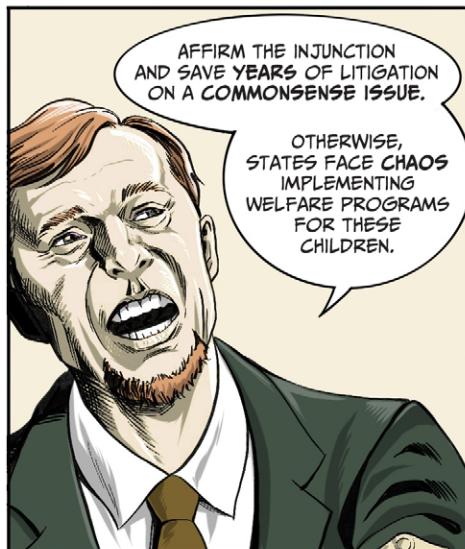
YOUR HONORS, THERE IS A LONG HISTORY OF JUDGES HALTING THE GOVERNMENT'S UNCONSTITUTIONAL ACTS, EVEN IF JUDGES DIDN'T CALL THEM UNIVERSAL INJUNCTIONS.

AND EVERY JUDGE REVIEWING TRUMP'S ORDER FOUND IT BLATANTLY UNCONSTITUTIONAL.

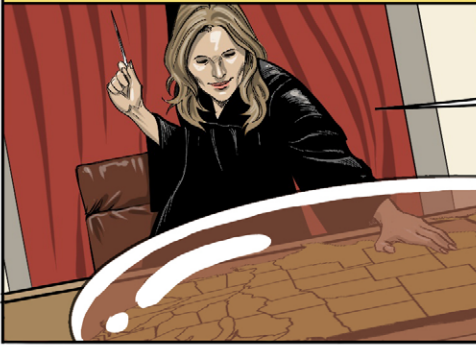


AFFIRM THE INJUNCTION AND SAVE YEARS OF LITIGATION ON A COMMONSENSE ISSUE.

OTHERWISE, STATES FACE CHAOS IMPLEMENTING WELFARE PROGRAMS FOR THESE CHILDREN.

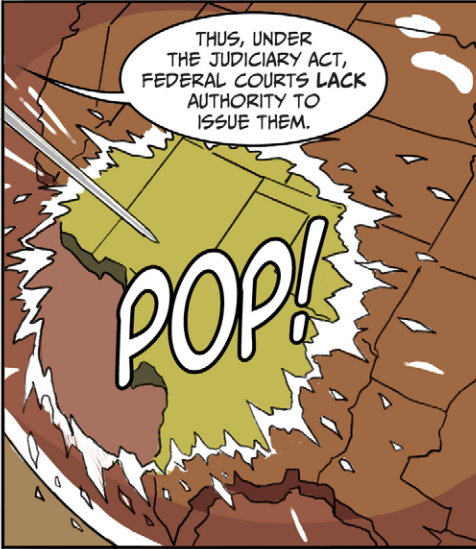


IN JUNE 2025, THE SUPREME COURT RULED 6-3 THAT LOWER COURTS CANNOT ISSUE UNIVERSAL INJUNCTIONS.

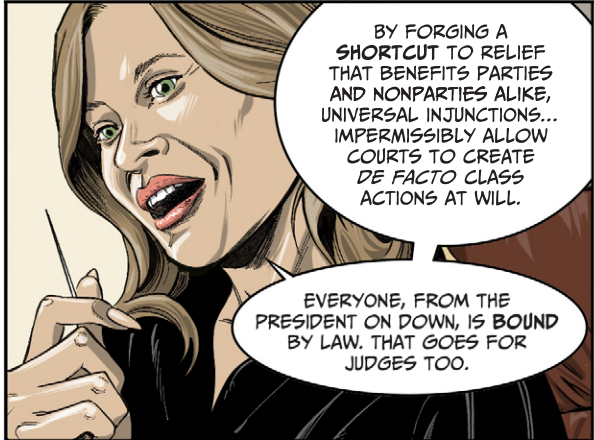


THE JUDICIARY ACT OF 1789 ENDOWED FEDERAL COURTS WITH JURISDICTION OVER "ALL SUITS... IN EQUITY." THOUGH FLEXIBLE, THIS EQUITABLE AUTHORITY IS NOT FREEWHEELING.

NOTHING LIKE A UNIVERSAL INJUNCTION WAS AVAILABLE AT THE FOUNDING, OR FOR THAT MATTER, FOR MORE THAN A CENTURY THEREAFTER.



THUS, UNDER THE JUDICIARY ACT, FEDERAL COURTS LACK AUTHORITY TO ISSUE THEM.



BY FORGING A SHORTCUT TO RELIEF THAT BENEFITS PARTIES AND NONPARTIES ALIKE, UNIVERSAL INJUNCTIONS... IMPERMISSIBLY ALLOW COURTS TO CREATE DE FACTO CLASS ACTIONS AT WILL.

EVERYONE, FROM THE PRESIDENT ON DOWN, IS BOUND BY LAW. THAT GOES FOR JUDGES TOO.

THE COURT'S RULING MEANS THE INJUNCTIONS IN *TRUMP V. CASA, INC.* PROTECT ONLY THE SPECIFIC PARTIES TO THE LAWSUIT, INCLUDING THE PREGNANT WOMEN REPRESENTED BY CASA.

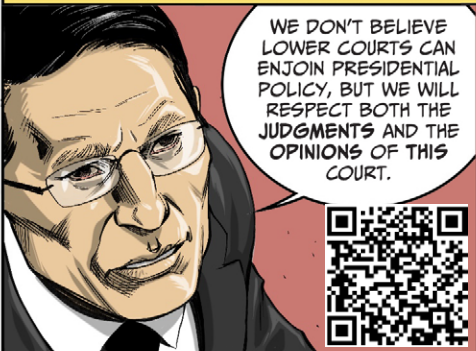


THE DISSIDENTS ISSUED A WARNING, HOWEVER.

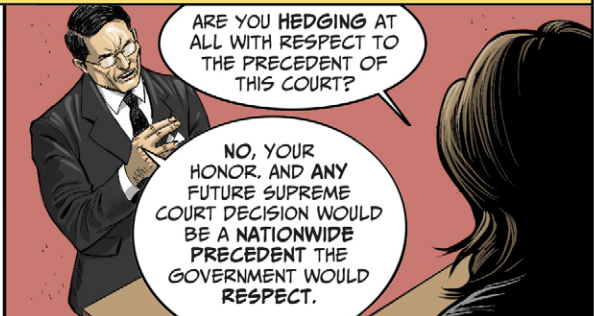
NO RIGHT IS SAFE IN THE NEW LEGAL REGIME THE COURT CREATES.

THESE INJUNCTIONS, AFTER ALL, PROTECT NEWBORNS FROM THE EXCEPTIONAL, IRREPARABLE HARM ASSOCIATED WITH LOSING A FOUNDATIONAL CONSTITUTIONAL RIGHT AND ITS IMMEDIATE BENEFITS.

YET A JUDICIARY UNDER FIRE HAD SECURED A CRUCIAL PROMISE FROM THE EXECUTIVE BRANCH TO RESPECT THE RULE OF LAW.



WE DON'T BELIEVE LOWER COURTS CAN ENJOIN PRESIDENTIAL POLICY, BUT WE WILL RESPECT BOTH THE JUDGMENTS AND THE OPINIONS OF THIS COURT.



ARE YOU HEDGING AT ALL WITH RESPECT TO THE PRECEDENT OF THIS COURT?

NO, YOUR HONOR. AND ANY FUTURE SUPREME COURT DECISION WOULD BE A NATIONWIDE PRECEDENT THE GOVERNMENT WOULD RESPECT.

MAY OUR GOVERNMENT ALWAYS HONOR THAT PROMISE.



SCHOLAR BIOS



CLARK NEILY IS A CAREER CONSTITUTIONAL LITIGATOR AND SENIOR VICE PRESIDENT FOR LEGAL STUDIES AT THE CATO INSTITUTE. NEILY GIVES BUREAUCRATIC BULLIES NO QUARTER AND HAS AN ABIDING PASSION FOR LIBERTY, LIMITED GOVERNMENT, AND THE RULE OF LAW.



THOMAS BERRY IS THE DIRECTOR OF THE CATO INSTITUTE'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES AND EDITOR IN CHIEF OF THE *CATO SUPREME COURT REVIEW*. BEFORE JOINING CATO, TOMMY WAS AN ATTORNEY AT THE PACIFIC LEGAL FOUNDATION AND CLERKED FOR JUDGE E. GRADY JOLLY OF THE US COURT OF APPEALS FOR THE FIFTH CIRCUIT.



JAMES CRAVEN IS THE CATO INSTITUTE'S MANAGER OF LEGAL STUDIES AND EDITOR-IN-CHIEF OF THE *ILLUSTRATED SUPREME COURT REVIEW*. A FORMER CRIMINAL DEFENSE ATTORNEY, JAMES SERVED AS ACTING DIRECTOR OF CRIMINAL JUSTICE REFORM AT REASON FOUNDATION BEFORE JOINING CATO IN 2020.



BRENT SKORUP IS A LEGAL FELLOW IN THE CATO INSTITUTE'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES. SKORUP'S RESEARCH AREAS INCLUDE FREE SPEECH, TECHNOLOGY LAW, FOURTH AMENDMENT PROTECTIONS, REGULATION, AND PROPERTY LAW.



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ARTIST BIOS



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EMAN CASALLOS IS A FREELANCE COMIC BOOK ARTIST FROM JOPLIN, MISSOURI. HE HAS WORKED ON COMICS FOR PROPERTIES SUCH AS *CAPTAIN PLANET*, *PATHFINDER*, *BATTLESTAR GALACTICA*, *JENNIFER BLOOD*, AND *VAMPIRELLA*. EMAN IS THE PRIMARY ILLUSTRATOR BEHIND THE CASES *TRUMP V. CASA*, *MARTIN V. UNITED STATES*, AND *ST. ISIDORE V. DRUMMOND* IN THIS VOLUME.



BEN HUMENIUK IS A CARTOONIST AND EDUCATOR FROM HOUSTON, TEXAS, WHO HAS DRAWN AND WRITTEN COMICS INCLUDING *WAKING LIFE*, *THE MAGNIFICENT MAKERS*, *BRO-D CAN'T BE BROKEN*, AND *A LAST GOODBYE*. BEN HAS PROVIDED EDITORIAL CONSULTATION FOR THE *ISCR* SINCE 2024 AND COLORED SELECT PAGES IN THIS VOLUME.

ABOUT THE CATO INSTITUTE

THE CATO INSTITUTE WAS ESTABLISHED IN 1977 AS A NONPARTISAN PUBLIC POLICY RESEARCH FOUNDATION DEDICATED TO ADVANCING THE PRINCIPLES OF INDIVIDUAL LIBERTY, FREE MARKETS, AND LIMITED GOVERNMENT.

CATO'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES WAS ESTABLISHED IN 1989 TO RESTORE THE PRINCIPLES OF CONSTITUTIONAL GOVERNMENT THAT ARE THE FOUNDATION OF LIBERTY. TOWARD THOSE ENDS, THE CENTER PUBLISHES BOOKS AND STUDIES, FILES AMICUS BRIEFS, CONDUCTS CONFERENCES, AND PRODUCES THE ANNUAL *CATO SUPREME COURT REVIEW*.

CATO'S PROJECT ON CRIMINAL JUSTICE WAS FOUNDED IN 1999 AND FOCUSES ON THE SCOPE OF SUBSTANTIVE CRIMINAL LIABILITY, THE PROPER AND EFFECTIVE ROLE OF POLICE IN THEIR COMMUNITIES, CONSTITUTIONAL AND STATUTORY SAFEGUARDS FOR SUSPECTS AND DEFENDANTS, CITIZEN PARTICIPATION IN THE JUSTICE SYSTEM, AND ACCOUNTABILITY FOR LAW ENFORCEMENT OFFICERS.

CONTRIBUTORS

THOMAS BERRY CLARK NEILY BRENT SKORUP

JAMES CRAVEN LAURA BONDANK-HARMON

DAN GREENBERG MIKE FOX

LEARN FROM CONSTITUTIONAL SCHOLARS
ABOUT SOME OF 2024-2025'S BIGGEST
SUPREME COURT CASES—WITH COMICS!

SEVEN CASES ARE FINELY ILLUSTRATED AND
THOUGHTFULLY EXAMINED IN AN ACADEMIC,
NON-PARTISAN MANNER.

CASES

TIKTOK V. GARLAND

PERTTU V. RICHARDS

ST. ISIDORE V. DRUMMOND

MARTIN V. UNITED STATES

FSC V. PAXTON

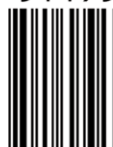
BARNES V. FELIX

TRUMP V. CASA

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