

Supreme Court Review *takes stock of the 2017–18 term*

## Leading Scholars Review Court's Major Cases

**C**ato *Supreme Court Review*, released every year at Cato's Constitution Day symposium, asks leading scholars and practitioners of the law to weigh in on the major cases of the concluded term. Released just three months after the end of each term, this year's *Cato Supreme Court Review* is the 11th and last edition under the editorship of Ilya Shapiro before he passes the reins to Trevor Burrus.

With high drama under way in the Senate Judiciary Committee over the possible successor to Justice Anthony Kennedy, the 2017–2018 term

revealed a remarkable lack of “swing” from the man long seen as the Court's swing vote. In his last term before announcing his retirement, in no cases did Justice Kennedy join the Court's four liberals to produce a 5–4 ruling of the sort that was made famous in the landmark gay-rights cases.

It was a good year for Cato's amicus curiae (“friend of the court”) briefs. Cato scholars filed 15 such briefs in 2017–2018. In one case (*United States v. Microsoft*), legislative action made the case moot

before a ruling. In the 14 remaining cases, Cato was on the winning side in 11. This performance improves on last year's record, when Cato's briefs were on the winning side in 9 cases and on the losing side in 4.

Among these rulings was *Minnesota Voters Alliance v. Mansky*, where the Court struck down a state law that broadly prohibited “political” apparel and messages worn by voters at the polling place. This year's *Review* includes an argument that the ruling did not go nearly far enough from Rodney A. Smolla, dean and professor of law at Widener University Delaware Law School. Instead of striking down the law as overbroad, Smolla contends that the Court should have overturned its past precedents upholding laws even as applied to narrower electioneering speech like buttons and T-shirts that advocate particular candidates.

In another important victory for federalism and personal freedom, the Court struck down a federal law requiring most states to prohibit sports gambling in *Murphy v. NCAA* (retitled from *Christie v. NCAA*, under which Cato's amicus brief was filed). For this year's *Review*, Arizona Attorney General Mark Brnovich offered his thoughts on why this decision was overdue, drawing on his experience as Arizona's chief gambling regulator prior to his election as attorney general. See also page 9 for excerpts of remarks at Cato's Constitution Day symposium. ■

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## Cato News Notes

### FREEDOM IN THE 50 STATES ATTRACTS COVERAGE AND CRITICS

**T**he 2018 edition of *Freedom in the 50 States* was released in August. This is the only ranking analysis of the states to include both personal and economic freedom in a comprehensive overview of public policy choices. This year's surprise winner was Florida, pushed to the top spot by radical improvements in fiscal policy in recent years. The rankings attracted widespread notice in state and local media, with reporters eager to explain each state's rankings. But not all the notice was positive. New York continues to place dead last by a wide margin, a fact that drew a rebuke from *New York Times* columnist Paul Krugman. In his denunciation, Krugman pointed to Florida's relatively high ranking on infant mortality, typical of southern states. But in his eagerness to denounce a libertarian conception of freedom, Krugman made a basic factual error in making the same allegation against New Hampshire. The “Live Free or Die” state ranks second on overall freedom but also has the second-lowest infant mortality rate in the nation. The full report, including customizable interactive rankings, can be found at [freedominthe50states.org](http://freedominthe50states.org).

### A TIMELY DEFENSE

**C**ato's project to repeal the Jones Act—a harmful bit of protectionist legislation from the 1920s that restricts the use of foreign-built ships in American waters—has the special interests on edge and fighting back. In a *Washington Times* opinion piece also touted by the American Maritime Partnership, a domestic industry group that defends the Jones Act, U.S. Rep. Duncan Hunter (R-CA) defended the law as crucial to national security. At the time, Hunter was chair of the House Coast Guard and Maritime Transportation Subcommittee and thus a key obstacle to any attempts at reform. But in August, Hunter was indicted by a federal grand jury on charges of misusing campaign funds for his personal expenses, and was promptly stripped of his committee assignments by House Republican leadership. Advocates of repeal, however, also lost an important ally with the passing of Sen. John McCain (R-AZ), a passionate longtime foe of the Jones Act.