AMERICAN CONSTITUTION SOCIETY

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Securing Rights in Every Community

The United States is in the midst of a struggle between securing the promise of a multiracial democracy and succumbing to authoritarianism. It is a struggle between courts committed to the rule of law and courts committed to the conservative legal movement's agenda, between policymakers seeking to securing freedoms and rights for all people and those seeking to secure more power for the powerful and privileged at the expense of historically marginalized, vulnerable communities.

As the conservative-captured U.S. Supreme Court makes it more difficult to protect individual and civil rights for all through the U.S. Constitution and federal laws, we must look to our state and local governments to shore up the progressive values that have always been the guidepost in our struggle for a multiracial democracy. To do this, we must reject the stale conventional wisdom that pits "red" states against "blue" and coastal states and urban areas against southern, exurban, and rural states and regions. While ideological geographic sorting is a reality, if we look more closely, there are vibrant progressive communities in the most conservative states and threats to multiracial democracy in the most progressive.

This Program Guide offers a sample of topics that address the ways in which individual and civils rights and freedoms can and are being secured and protected in states and communities throughout the country. The topics selected for this Program Guide are not exhaustive but are meant to provide examples of the myriad ways progressives in communities throughout the country can fight for laws and legal systems that strengthen our democratic legitimacy, uphold the rule of law, and secure individual and civil rights in every community.

Past Program Guides offer additional information related to this work, including more information on voting and democracy efforts, the movement for Truth, Racial Healing, and Transformation, and progressive federalism. You can find copies of our all our previous Program Guides here.

I. Federal and State Protection of Rights

A. Federal Rights and a Conservative Captured Supreme Court

The U.S. Constitution along with federal law have long protected individual rights. From the Constitution's protection of freedom of speech to the Civil Rights Act's codification of the right

to be free from invidious discrimination on the basis of race, sex, and national origin, among other things, federal law has often served as the first line of defense of individual rights. Because the Supremacy Clause of the U.S. Constitution preempts conflicting state laws, federal statutory and constitutional protections have often secured rights to people who live in places where local and state laws and governments would deny those rights.

For example, the Court's holding in *Brown v. Board of Education* that racial segregation in public schools is unconstitutional applied in all parts of the United States, including in communities that would never have desegregated public schools absent a federal directive. And the Court's holding in *Obergerfell v. Hodges* that it was unconstitutional to deny people the right to marry their same-sex partners applied to everyone in the U.S. regardless of whether they lived in places that had bans on same-sex marriage. Similarly, federal statutes can provide greater protections than state law, as in *Bostock v. Clayton County* where the Court held that Title VII prohibits workplace discrimination based on gender identity or sexuality across the country, regardless of state laws or precedent to the contrary.

States may go further than federal law and the U.S. Constitution to explicitly protect rights like the right to privacy, the right to abortion, and the right to a free public education, and indeed many states have. But in states that do not have broad constitutional protections for individual rights or that have constitutional prohibitions that restrict individual rights, the U.S. Supreme Court's holdings have secured those rights to a broad swath of people who would otherwise have no protections.

However, over the last 20+ years, the U.S. Supreme Court has moved further to the right and has now been fully captured by the conservatives legal movement. The Roberts Court has worked to strip people of their rights and weaken protections for marginalized and vulnerable people and communities while favoring privileged individuals, allowing them to use their rights as a cudgel. The Court has transformed First Amendment protections from a shield against governmental intrusion into private exercise of religion and activities that protect democracy and our democratic institutions into a sword to be wielded by privileged individuals and groups that seek to undermine the individual rights of others. The Roberts Court has allowed the First Amendment to be used by corporations like Hobby Lobby and wedding cake makers and website designers to privilege their personal religious beliefs over the civil rights of women and the LGBTQ+ community. The Roberts Court has also allowed corporations and wealthy individuals to use the First Amendment to pour unlimited amounts of money into elections at all levels in cases like *Citizens United v. Federal Election Commission* and *McCutcheon v. Federal Election Commission*, squelching the voices of people with more limited means.

The Roberts Court also reinterpreted the Second Amendment to expand the rights of gun owners in a series of cases starting with *District of Columbia v. Heller* and culminating in *NYSRPA v. Bruen*, undermining reasonable state regulations to the detriment of everyone. Using the Court's new "text, history, and tradition" approach to the Second Amendment announced in *Bruen*, well-

funded groups have sought to challenge virtually every gun regulation in the country, from limitations on high-capacity magazines and bump stocks to regulation of ghost guns and age limits on gun licensing and registration. Though ultimately unsuccessful, in *U.S. v. Rahimi* gun advocates sought to overturn a federal law that temporarily disarms individuals under domestic violence restraining order. The goal of all this litigation is to make it impossible to regulate guns altogether, leaving everyone everywhere vulnerable to gun violence.

In addition to weaponizing constitutional provisions and amendments, the Court has stripped people of constitutional and federal civil rights that the Court and the U.S. Constitution once protected. The Court removed federal constitutional protection for the right to abortion, rolled back protections of voting rights, and has allowed people to be forced into secret, binding arbitration by corporations that are afraid of being held to account by people exercising their Seventh Amendment right to trial by jury in a court of law. The current U.S. Supreme Court has proven itself to be openly hostile to the rights of ordinary people who lack political or economic power.

B. Role of State Constitutions and State Courts in Protecting Individual Rights

In the absence of robust protection of individual and civil rights at the federal level, state constitutional protections and state supreme courts can serve as a backstop to protect rights and guarantee greater protections than federal law. Each state is governed by its own constitution, and most state constitutions are broader in scope than the U.S. Constitution. They cover more topics, are amended more frequently than the U.S. Constitution, and have been rewritten on a regular basis.

State constitutions are important sources of individual rights. And where state constitutions do not already protect important rights that no longer receive protection at the federal level, amending them to provide greater protection is easier in some states than amending the U.S. Constitution and can be easier than passing a federal law. Each state also has its own judiciary and its own supreme court to interpret the contours of state statutory and constitutional protections free from the restrictive views of the Roberts Court.

1. State Constitutions as a Source of Rights and an Avenue for Change

As U.S. Supreme Court Justice William Brennan Jr. wrote in 1977, "[s]tate constitutions . . . are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law." Every state constitution protects individual rights and protects a greater number of rights than the U.S Constitution does. Some of these individual rights parallel federal constitutional rights, but many of them go beyond the guarantees of the U.S. Constitution and reflect the values of the people of each state at the time the constitution or the amendment was adopted.

For example, in addition to protecting the right to trial by jury, many state constitutions also protect the right to a remedy for wrongs committed. In addition to protecting the freedom of

speech, most state constitutions also protect the right to vote and participate in elections. Many state constitutions contain specific protections for the right to privacy, the right to a public education, the right to hunt and fish, and the rights of workers.

Where state constitutions do not contain a specific provision that protects an individual right, they may be amended more readily than the U.S. Constitution. The avenues available for amending state constitutions are contained within the documents themselves.

In every state, constitutional amendments may be drafted by state legislators, and may be placed on the ballot for approval by voters if they receive sufficient support from other legislators. More than a dozen state constitutions also give citizens of those states the constitutional right to participate in an initiative process to amend the constitution. These initiatives and referenda are initiated by citizens of the state, who draft the language of the amendment and gather the support of other citizens to get the provision placed on the ballot for approval by the voters in the state. Amending state constitutions by citizen-led initiative can be a democratic way to counter decisions, whether by courts or by state legislatures or executives, that undermine the individual rights that the people want to secure to themselves.

After the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health* held that there is no federal constitutional right to abortion, leaving the issue to the states, voters in California, Michigan, Ohio, and Vermont approved amendments adding the right to reproductive freedom to their state constitutions. In Kansas and Kentucky, voters rejected proposed state constitutional amendments that would have denied a right to abortion under those state's constitutions. Voters in other states, including Louisiana and Tennessee, approved such rights-denying amendments prior to the decision in *Dobbs*. In November 2024, voters in at least eight states will have the opportunity to add state constitutional amendments that would protect the right to abortion.

As state constitutional law scholar John Dinan has noted, "[c]itizen-led amendments don't begin and end with reproductive rights." But as with reproductive rights, these amendments can grant or deny rights under state constitutions. While citizens in some states have initiated and approved amendments to expand rights by establishing redistricting commissions or legalizing the sale, possession, and use of cannabis, there are prominent examples of the initiative process being used to deny rights to state residents. In 2008, Proposition 8 in California led to a ban on gay marriage that was eventually overturned on federal constitutional grounds. The citizen-initiated amendment process can also be used by wealthy individuals to undercut state supreme court decisions that harm their interests. Some state legislatures have considered making it harder to amend state constitutions because amending state constitutions can be a powerful vehicle for change.

2. State Supreme Courts as Protectors of Rights Under State Constitutional Law

Much like the U.S. Constitution is not the sole source of individual rights in the United States, the U.S. Supreme Court is not the sole or final arbiter of all constitutional questions. State supreme

courts are the final arbiters of state constitutions, and they are free to interpret their own constitutions independently of U.S. Supreme Court precedent even when state and federal constitutional language is identical. This creates the opportunity for state supreme courts to provide broader, stronger, and different protections under their state constitutions than those guaranteed by the U.S. Constitution and the U.S. Supreme Court. A couple of recent examples are instructive.

In 2024, the Hawai'i Supreme Court interpreted the state's right to bear arms, which parallels the Second Amendment to the U.S. Constitution, differently than the U.S. Supreme Court interprets the federal constitutional right. In its decision holding that in Hawai'i there is no state constitutional right to carry a firearm in public, the court explained that when the U.S. and Hawai'i constitutions contain matching provision, "Hawai'i has chosen not to lockstep with the Supreme Court's interpretation of the federal constitution." It then engaged in an independent interpretation of Hawai'i's constitutional provision, rejecting the U.S. Supreme Court's "fuzzy 'history and traditions'" approach to the exact same language used in the Second Amendment, and held that Hawai'i's reasonable gun regulations did not violate the state's constitutional right to bear arms or the right contained in the Second Amendment.

In 2019, the Kansas Supreme Court held that the state constitution's right to personal autonomy "allows a woman to make her own decisions regarding her body, health, family formation, and family life — decisions that can include whether to continue a pregnancy," and restrictions of that right must pass strict scrutiny analysis. The case was sent back to the trial court, which held that a state law prohibiting the most common second-trimester abortion procedure could not survive strict scrutiny analysis. On appeal, the state asked the Kansas Supreme Court to reconsider its 2019 decision and hold that the right is not fundamental and not subject to strict scrutiny. Despite a change in the court's personnel, the Kansas Supreme Court in 2024 reaffirmed its earlier decision that the state constitutional right to personal autonomy, which includes the right to decide whether to terminate a pregnancy, is fundamental and cannot be impaired without meeting a strict scrutiny analysis, which the Kansas law in issue did not.

As much promise as there is in state constitutions for protecting individual rights, state constitutional rights are only as good as the state courts protecting them. State supreme courts are subject to swifter political changes than the U.S. Supreme Court, making equally swift changes in interpretation and interpretive methods possible. Much like political changes led a realigned U.S. Supreme Court to abandon its own precedent in *Dobbs* and many other cases over the last few years, the same happens regularly in state courts.

Where state supreme court judges are appointed, politically motivated governors have sought and achieved changes to laws and processes to permit them to pack the courts with conservatives who will interpret the state constitution and state laws the way the governors want them to. In the majority of states, though, state supreme court judges must stand for election, presenting a different political challenge to the independence of state courts. The flow of money into state

judicial elections can change the makeup of state supreme courts much more quickly than the federal bench changes. Disappointed, wealthy litigants can seek the ouster of judges unfavorable to their interests while using their wealth to support judicial candidates and judges who will favor their arguments. Political changes that altered the makeup of state supreme courts, as well as their decisions, could fill this Program Guide, but two recent examples make the point clear.

In Florida, voters added an amendment to the state constitution in 1980 to expressly protect the right to privacy. The provision was interpreted by the Florida Supreme Court to be a fundamental right that protected all aspects of a person's private life from governmental intrusion unless the intrusion was narrowly tailored to meet a compelling state interest. Since the 1980s, this included the right to an abortion through the end of the second trimester of pregnancy. But three justices on the Florida Supreme Court retired in 2018, and then-Governor-Elect Ron DeSantis enlisted members of the Federalist Society to select judges for him to appoint once he was sworn into office. In 2024, the newly conservative-packed Florida Supreme Court abandoned its own interpretation of the state's constitution based on changes in interpretation of the U.S. Constitution at the federal level by the U.S. Supreme Court. The court held that the state's constitutional right to privacy does not include a right to abortion, allowing the state to limit the right without passing a strict scrutiny test.

Notably, two of the recently appointed justices on Florida's high court will stand for retention elections in November 2024. Florida voters will also have the chance to vote on an initiative to add an amendment to the state constitution protecting the right to abortion before fetal viability or when "necessary to protect the patient's health, as determined by the patient's healthcare provider." In the court's decision allowing the initiative to appear on the November 2024 ballot, four of the seven justices indicated that they are open to arguments that would undermine that initiative, as well.

In 2018, the Iowa Supreme Court held that the right to decide whether to continue or terminate a pregnancy without unwarranted governmental intrusion was fundamental and used a strict scrutiny analysis to strike down a 72-hour waiting period. But just four years later, after four members of the court were replaced, the Iowa Supreme Court overruled its 2018 decision, and held that there is no fundamental right to abortion in the state constitution.

Current state constitutional protections and future amendments depend on state supreme courts that are willing to give those rights the robust protection they deserve. It is not enough to amend the state constitution to add greater protections than the U.S. Constitution provides if the state supreme court is not willing to uphold them. An engaged electorate must not only harness the promise of state constitutions, but also stay informed and engaged in every election that can change the balance of the state supreme court.

Discussion Questions

What state constitutional provisions and state supreme court decisions provide greater protections than the U.S. Constitution? What additional protections should be added to our state constitution to better protect individual rights and insulate important government institutions that may have eroded due to U.S. Supreme Court decisions or state laws and regulations? What are the available processes for amending the state constitution? What are the challenges to amending the state constitution? What methods of interpretation have guided our state supreme court? Where the federal and state constitutions contain the same text, how have our state courts engaged in an independent interpretation or reached different conclusions than the U.S. Supreme Court regarding these provisions? What are the advantages and disadvantages of relying on state courts to protect individual rights based on state constitutional provisions? How should we weigh the opportunities and risks associated with the relative ease with which state constitutions can be amended and with referenda and initiatives to amend state constitutions? Does the more quickly changing composition of state supreme courts offer insight into proposals to reform the U.S. Supreme Court, including calls for term limits? What are the pros and cons of a more politically responsive or democratically accountable high court?

Resources

Amer. Const. Soc., *Into the Breach: Relying on State Courts and Constitutions to Safeguard Rights*, YOUTUBE (Jul. 2, 2019); Patrick Berry, *Reforming State Judicial Selection*, ACS EXPERT FORUM (Oct. 15, 2018); Mary Bonauto, *Equality and the Impossible—State Constitutions and Marriage*, 68 RUTGERS U. L. REV. 1482 (2016); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977); Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 COLUM. L. REV. 1855 (2023); *State Constitutions and Abortion Rights,* CENTER FOR REPRODUCTIVE RIGHTS (Aug. 21, 2024, 2:55:00 PM); THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES (2022); John Dinan, *Constitutional Amendment Processes in the 50 States*, STATE COURT REPORT (July 24, 2023); Joshua A. Douglas, *The Right to Vote Under State Constitutions*¸ 67 VANDERBILT L. REV. 89 (2014); Catherine L. Fisk & Martin H. Malin, *After* Janus, 107 CAL. L. REV. 1821 (2019); Goodwin Liu, *State Constitutions and the Protection of Individual Rights: A Reappraisal*, 92 N.Y.U. L. REV. 1307 (2017); Goodwin Lui, *State Courts and Constitutional Structure*¸ 128 YALE L. J. 1304 (2019); *50 Constitutions,* STATE DEMOCRACY RESEARCH INITIATIVE (Aug 21, 2024, 3:00:00 PM); *Symposium: The Promise and Limits of State Constitutions*, STATE COURT REPORT (Feb. 8-9, 2024); Patrick Stickney, *More Than Catching Up: A Few Thoughts on Robust Engagement with State Constitutional Law*, ACS EXPERT FORUM (Nov. 26, 2018); Robert F. Williams, *State Constitutional Law After* Dobbs *and* Bruen, STATE COURT REPORT (Sept. 7, 2023).

II. States and the Health of Democracy

A central component of securing rights for people in communities in cities and states throughout the country is the health of our democracy and our democratic institutions. States are at the heart of our elections—and democracy itself—presenting opportunities for

policymakers and leaders to create either paths or barriers to the franchise and democratic participation.

The Federal Election Clause, found in Article I of the U.S. Constitution, provides that "the Times, Places and Manner of holding Elections for Senators and Representative shall be prescribed in each State by the Legislature thereof," with Article II similarly granting states responsibility for administering presidential elections. Each state is also responsible for establishing the rules and administration of its own elections. As with federal elections, state elections are subject to requirements and limitations imposed by the U.S. Constitution and federal law, including the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments and the Voting Rights Act (VRA), as well as each state's own constitution and laws.

Despite these protections, states differ significantly in their approach to ensuring access to the franchise, with resulting disparities in effective representation. In states like Oregon, which facilitates participation by automatically registering voters after they interact with the DMV and mailing ballots to all eligible voters before each election, turnout is often high. Meanwhile, in states like Mississippi, which does not permit early voting, restricts absentee balloting, and bans people convicted of felonies from voting, turnout is often low.

In two recent ACS Program Guides, we have explored the important connections between robust voting rights at the state level and a vibrant multiracial democracy. In the 2022 Program Guide, Democracy's Moment of Truth, we laid out the various attacks leveraged against voting rights at the state level and how the conservative-captured U.S. Supreme Court has enabled many of these attacks. These include the 2013 case *Shelby County v. Holder*, which rendered Section 5 of the VRA inoperable, and the 2021 case *Brnovich v. Democratic National Committee*, which undermined Section 2 of the VRA's purpose of prohibiting discriminatory voting systems by effectively giving carte blanche to any voting restrictions designed after 1982. The Program Guide also examines the impact of the 2019 case *Rucho v. Common Cause* in which the Court held that political gerrymandering is a nonjusticiable "political question" beyond the Court's jurisdiction, but held state constitutions may provide an alternative avenue for litigating these claims.

The 2023 Program Guide, Authoritarian Threats to Securing a Multiracial Democracy, includes a section on "Democracy and Voting," that examines two victories in voting rights. In *Allen v. Milligan*, the Court rejected Alabama's argument that in VRA Section 2 litigation racial gerrymandering claims must be assessed using a race neutral approach. In *Moore v. Harper*, the Court rejected the conservative legal movement's fringe "independent state legislature theory" that sought to remove state courts' authority to adjudicate claims made under the Federal Elections Clause (Art. I Sec. 4).

Since the publication of these Program Guides, the Supreme Court decided *Alexander v. South Carolina State Conference of the NAACP*, a case in which the conservative bloc of the Court

announced a new standard in racial gerrymandering cases that are challenged under the Equal Protection Clause of the Fourteenth Amendment. The case involved a challenge to a gerrymandered map, which drew district lines in a manner that removed tens of thousands of Black voters from a district to create a safe Republican district. Although a three-judge panel ruled that race was the predominant factor in drawing the district, the Supreme Court refused to credit the court's judgment. Justice Samuel Alito's opinion for the majority held that courts must review claims with "a presumption that the legislature acted in good faith" when drawing legislative districts. The Court further required plaintiffs to provide a permissible alternative map in order to prevail. This case was decided near the end of the Court's most recent term, so it remains to be seen how extensively it might undermine efforts to challenge state legislatures' racially discriminatory redistricting efforts.

For more information about the role states play in securing or undermining voting rights, elections, and our democracy, checkout our 2022 and 2023 Program Guides here. You can also learn more about how to engage in the state and local democratic process by visiting ACS's Run.Vote.Work. initiative.

Discussion Questions

How might the Court's "presumption of good faith," articulated in *Alexander v. South Carolina State Conference of the NAACP*, operate in light of decades of state legislatures gerrymandering congressional and state legislative districts to dilute the vote of racial minorities? What type of proof might courts accept to overcome this presumption? How might Congress more vigorously protect voting rights using their authority under Article I and the Fourteenth Amendment?

Resources

AM. CONST. SOC., PROGRAM GUIDE: DEMOCRACY'S MOMENT OF TRUTH (2022); AM. CONST. SOC., PROGRAM GUIDE: AUTHORITARIAN THREATS TO SECURING A MULTIRACIAL DEMOCRACY (2023); Amy Howe, *Court Rules for South Carlina Republicans in Dispute Over Congressional Map*, SCOTUSBLOG (May 23, 2024); Patrick Marley, et al., *Supreme Court's South Carolina Ruling Boosts GOP, with National Implications*, WASH. POST (May 23, 2024); Mark Joseph Stern, *Clarence Thomas Makes a Full-Throated Case for Racial Gerrymandering*, SLATE (May 23, 2024); Madiba K. Dennie, *Sam Alito Is Running Out of Ways to Show His Contempt for Democracy*, BALLS AND STRIKES (May 23, 2024).

III. Schools

A. Desegregation, Private Schools, and Voucher Programs

Seventy years ago, the U.S. Supreme Court issued its decision in *Brown v. Board of Education*, a case that would "transform America." The decision and its progeny, most notably *Brown II* and *Swann v. Charlotte-Mecklenburg Board of Education*, were meant to desegregate schools and force states to take proactive measures to ensure equal access to a quality public education for every

student. But resistance came swiftly and aggressively. Violent protests from white parents in Little Rock, Arkansas, Mansfield, Texas, Boston, Massachusetts, and cities across the country emboldened local and state leaders to resist desegregation at every turn.

In Virginia, a policy of "massive resistance" led public schools all over the state to close rather than integrate. In Prince Edward County, county officials closed the public schools and opened whites-only private schools that were funded with taxpayer money via tuition grants. This went on for five years before the Supreme Court ruled the scheme unconstitutional in 1964. Across the South in the 1960s and 1970s, white people fled public schools to newly opened private schools, dubbed "segregation academies" by researchers and academics. The result was a resegregation of the schools; public schools served mostly Black students with fewer resources while enrollment in well-resourced, all-white private schools doubled.

Conservative policymakers' financial and governmental support for private schools to avoid integration persists to this day. Voucher programs and other "school choice" initiatives function to transfer public funds from public schools to private schools with overwhelmingly white enrollment. Segregation academies continue to operate in the South with support from state lawmakers. A recent report from the Department of Education highlighted research that shows "much of the gains in school diversity that occurred after the *Brown* decision were reversed by the 1990s" and have now stalled. Seventy years after *Brown*, school voucher programs and other initiatives to funnel public funds into private education continue to hinder efforts to integrate schools and shrink the achievement gap.

In addition to undermining efforts to achieve equity in education, publicly funded private schools threaten another core constitutional value. According to the most recent data available from the Department of Education, about 77% of all students (K-12) enrolled in private school attend a religious school. For decades, courts and First Amendment scholars understood that directing public funds to religious schools was a clear violation of the separation of church and state, but three decisions from the Roberts Court over a few short years opened the door ever wider to allowing, and in some cases even *requiring*, public funding of religious schools.

B. Free Exercise Clause v. Establishment Clause

1. Private and Charter School Funding

Until recently, the Supreme Court had long held that the First Amendment's two Religion Clauses – Free Exercise and Establishment – should be held in balance to allow for religious practice to be neither compelled nor inhibited by the government. However, in a series of school funding cases brought or supported by Christian nationalists, the Court has taken a dramatic departure from such a balanced approach. In 2017, the Court held in *Trinity Lutheran Church v. Comer* that the exclusion of Trinity Lutheran from eligibility for a public benefit, a state grant to resurface its playground, "solely because it is a church" was unconstitutional. Three years later, the Court would go a step further in *Espinoza v. Montana Department of Revenue* to hold that "a state need not subsidize private education. But once a state decides to do so, it cannot disqualify

some private schools solely because they are religious." And finally, in 2022, Chief Justice John Roberts, who wrote the opinions for the majorities in *Trinity Lutheran* and *Espinoza*, penned the third of his three monumental decisions, rewriting this key area of First Amendment jurisprudence in *Carson v. Makin*. In that case, the Court held that Maine, which provides generally available school tuition assistance paid directly to private schools for students who do not have a public school in their area, must provide that assistance to religiously affiliated schools. Justice Sonia Sotomayor described the Court's actions in her dissent in *Carson*: "[I]n just a few years, the Court has upended constitutional doctrine, shifting from a rule that permits States to decline to fund religious organizations to one that requires States in many circumstances to subsidize religious indoctrination with taxpayer dollars."

Proponents of school voucher plans have taken the decision in *Carson* and attempted to push the envelope even further. For example, the decision in *Carson* did not reach the question of non-discrimination requirements that might render a school ineligible to receive public funding. Unsatisfied with their victory, advocates returned to Maine to challenge the state's Human Rights Act, which prohibits educational institutions from discriminating based on gender identity, as it would render some religious schools in the state ineligible from receiving voucher funds. A federal judge recently denied a preliminary injunction of the Human Rights Act's relevant provisions while noting the parties' intent to appeal the decision.

In the wake of the *Carson* decision, Oklahoma's state charter school oversight board approved an application from the Archdiocese of Oklahoma City and the Diocese of Tulsa to establish the nation's first publicly funded religious charter school. The virtual school was scheduled to open for the 2024-2025 school year but the Oklahoma Supreme Court held that the state's establishment of a religious charter school violates the Establishment Clause of the U.S. Constitution, the Oklahoma Constitution, and Oklahoma statutes. The school's Board of Directors, who argued that the Free Exercise Clause prohibited Oklahoma from denying their right to a charter solely because it is religious, and the state charter board have announced their intent to appeal to the United States Supreme Court.

2. Public School Curricula

Unfortunately, the Court had not limited its rewriting of Religion Clauses jurisprudence to the question of public funds used for private schools. The Court has also chosen to erode the long-established protections that keep religious instruction out of public schools. In the same term it handed down *Carson*, the Court handed down its disastrous decision in *Kennedy v. Bremerton School District*, overruling the fifty-year precedent of *Lemon v. Kurtzman* and replacing it with a "history and tradition" test in interpreting the Establishment Clause. The Court contorted fact and law to bless a public high school football coach's public prayer on school property with student athletes following football games. As Justice Sotomayor noted in her dissent, the Court once again paid "exclusive attention to the Free Exercise Clause's protection for individual religious exercise while giving short shrift to the Establishment Clause's prohibition on state

establishment of religion." And conservative legislators and public officials have certainly taken note.

In Louisiana, the state legislature passed a law which mandates public schools display the Ten Commandments in every classroom. The law was immediately challenged in federal court, drawing comments from the state's governor that objecting parents should "tell your kids not to look" at the posters. The parties have agreed that the law will not be implemented until November 15, 2024, to allow for a federal judge to review the case.

One week after Louisiana's law was signed, Oklahoma's state superintendent directed all public schools to not only post a copy of the Ten Commandments in classrooms but also teach the Bible as part of public-school curriculum. School administrators and advocates are challenging the legal authority of the superintendent to issue such directives.

Those looking to further erode the separation of church and state, particularly when it comes to schools, smell blood in the water, given the U.S. Supreme Court's recent Free Exercise and Establishment Clause decisions.

C. Book Bans and Anti-LGBTQ+ Laws Targeting Students

Christian nationalists and their allies not only advocate for public funding of sectarian schools and religious (exclusively Christian) education in public schools, but also demand the removal from school libraries and curricula any materials or ideas with which they disagree. Moms for Liberty, which according to the Southern Poverty Law Center has ties with hate and extremist groups, including white nationalists, has gained national notoriety for its efforts to "target teachers and school officials, advocate for the abolition of the Department of Education, advance a conspiracy propaganda, and spread hateful imagery and rhetoric against the LGBTQ community."

Book bans, a primary tool for Christian nationalist efforts to force their ideological hegemony on students, have exploded in popularity, with record numbers of books being challenged according to the American Library Association. Titles representing the "voices and lived experiences of LGBTQIA+ and BIPOC individuals" accounted for 47% of the books targeted in censorship attacks. Many of these bans have been challenged in court, and plaintiffs are beginning to see promising results.

Unfortunately, the focused attacks on the voices and lived experiences of LGBTQ+ folks has extended beyond library shelves. In ACS's 2023 Program Guide, Authoritarian Threats to Securing a Multiracial Democracy, we surveyed recent attacks on gender-affirming care, with particular focus on young people, and noted the Christian Right has led the charge in these attacks. In the year since publication of that guide, legislative threats to trans and nonbinary students have only intensified and the number of anti-LGBTQ+ school hate crimes reported to local police has skyrocketed in recent years. In states that have passed laws restricting the rights

of transgender students at school and teachers' ability to discuss sexuality and gender, the *Washington Post* found a significantly steeper rise in hate motivated attacks.

On April 19, 2024, the Biden administration issued new rules for enforcing Title IX, a civil rights law that protects students from discrimination based on sex. Advocates have celebrated the new regulations while highlighting work that remains to protect trans students who have come under hostile attack, particularly in athletic programs. In August 2024, the U.S. Supreme Court denied the Biden administration's emergency petition to stay an injunction preventing the enforcement of these new regulations as part of a suit brought by ten states and numerous local jurisdictions. The Court's denial of the petition means that this school year students in some states will receive the full protection of the new regulations, while students in other states, arguably those most hostile to trans and other LGBTQ+ students, will have none of the regulations' protections.

Discussion Questions

How does the historical context of school desegregation efforts inform the current fight over school funding and curriculum? Can state antidiscrimination laws and/or constitutional protections provide public accountability to private religious schools receiving public funds? How does the Court's recent preference for "history and tradition" tests impact the religious freedom claims of non-Christians? How are "history and tradition" tests playing into the efforts of Christian Nationalists? What is left of the Establishment Clause? Will the U.S. Supreme Court overrule *Stone v. Graham*, the 1980 case that struck down a Kentucky law nearly identical to Louisiana's new Ten Commandments law? What effect will the recent Title IX changes have on students and what more can be done from a federal regulatory perspective? What does the Court's recent decision in *Loper Bright v. Raimondo*, overturning *Chevron* Deference, mean for the future of these regulations?

Resources

Emily Bazelon, *How 'History and Tradition' Rulings Are Changing American Law*, N.Y. TIMES MAG. (Apr. 29, 2024); Derek W. Black, *When Religion and the Public-Education Mission Collide*, 132 YALE L. J. F. (Nov. 17, 2022); William M. Carter, Jr., *"Trans Talk" and the First Amendment* (U. of Pitt. Legal Studies Research Paper No. 2024-25, 2024); Caroline Mala Corbin, *The Supreme Court's Facilitation of White Christian Nationalism*, 71 ALA. L. REV. 833 (2020); Preston Green, Bruce Baker & Suzanne Eckes, *The Potential for Race Discrimination in Voucher Programs in a Post-Carson World*, PEABODY J. OF ED. (forthcoming); Jennifer Berry Hawes, *Segregation Academies Still Operate Across the South. One Town Grapples With Its Divided Schools.*, PROPUBLICA (May 18, 2024); Shayna Medley, *[Mis]interpreting Title IX: How Opponents of Transgender Equality are Twisting the Meaning of Sex Discrimination in School Sports*, 45 N.Y.U. REV. OF L. & SOC. CHANGE (2022); Dhanika Pineda & Davi Merchan, *Settlement in Challenge to Florida's 'Don't Say Gay' Law Clarifies Scope of LGBTQ+ Restrictions*, ABCNEWS (Mar. 12, 2024); Erika K. Wilson, *Racialized Religious School Segregation*, 132 YALE L. J. F. (Nov. 17, 2022); Alex Zhang, *Antidiscrimination and Tax Exemption*,

107 CORNELL L. REV. 1381 (2022); ProPublica, *The Legacy of Segregation Academies*, YOUTUBE (June 5, 2024).

IV. Criminal Legal Reform

Incarceration and policing policies are overwhelmingly decided at the local and state level—of the nearly 2 million people incarcerated nationwide, the vast majority are held in state prisons and local jails, not in federal custody. Policies vary wildly from state to state, with Louisiana incarcerating more than four times as many people per capita as Massachusetts.

With the ratification of the Fourteenth Amendment, the protections afforded by the U.S. Constitution related to criminal legal systems were expanded to apply to the states, including the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures, the Sixth Amendment's right to counsel, and the Eighth Amendment's ban on cruel and unusual punishment. The Fourteenth Amendment also guarantees equal protection and due process within states' criminal legal system.

While the U.S. Department of Justice and federal courts provide a backstop to ensure that constitutional rights are upheld across the various state systems, they are only able to review and intervene in a tiny portion of cases, leaving the administration of justice largely to local discretion. Violations of civil and human rights remain common throughout the U.S. criminal legal system. These violations are most keenly experienced by historically marginalized communities.

A. Reducing Incarceration and Ending Disparities

The United States has a higher criminal incarceration rate than any other independent democracy. Overincarceration disproportionately impacts Black people, who have an incarceration rate five times that of white Americans, and Latinos, who have an incarceration rate 1.3 times higher.

In recent years, national movements for justice reform have spurred the federal government and many states to focus on reducing incarceration and eliminating disparities in sentencing.

In 2018, Congress enacted the First Step Act, which included provisions shortening the lengths of federal sentences and improving conditions in federal prisons. Building on this momentum, legislatures in a dozen states and the District of Columbia have enacted "second look" laws, which allow judges to review and reconsider lengthy sentences. The Second Look Network seeks to expand these victories via litigation in places that have not yet passed second look laws.

Commentators and advocates have criticized the implementation of the First Step Act, however, noting among other problems the racial bias in the algorithm used to predict recidivism, which results in persistent racial disparities that disadvantage Black and brown individuals.

B. Eliminating Cruel and Unusual Punishment

One of the longest running battles over cruel and unusual punishment has been the continued application of the death penalty in the United States, which is the only Western democracy that retains the death penalty. Like the criminal legal system more broadly, racial bias has long plagued capital punishment, with Black defendants accused of killing white victims far more likely to face capital prosecution and be sentenced to death.

The Supreme Court briefly declared a moratorium on the practice in the 1972 case *Furman v. Georgia*. However, the fractured decision—which included a brief per curiam decision accompanied by several concurrences and dissents—was short-lived and met with widespread backlash among the states. In 1976, in *Gregg v. Georgia*, the Court revived capital punishment under a process states claimed would provide more predictability and fairness in the application of the death penalty. The process the Court approved, in fact, provided neither predictability nor fairness, and fueled a boom in executions that lasted into the 2000s.

Thanks to cultural shifts, falling public support for the death penalty, and increased judicial supervision of the practice, the number of death sentences imposed per year has declined in recent years from 151 in 2003 to just 21 in 2023. Similarly, executions declined from a high of 98 in 1999 to a low of 11 in 2021.

Today, application of the death penalty is heavily dependent on region. Twenty-three states and the District of Columbia have abolished the death penalty entirely, while six more have placed moratoria on the practice. Several other states, like Pennsylvania and Montana, have not carried out executions in this century. New capital convictions are now clustered in a handful of states like Texas, which executes more people than any other state, and Oklahoma which has executed the most people per capita.

Due to these variations, contemporary advocacy against the death penalty takes many forms. Capital defense attorneys continue to use federal litigation to limit the circumstances under which capital punishment may be imposed. Thanks to their efforts, the Supreme Court has gradually narrowed the category of people who may be legally executed, excluding people who were children at the times their offenses occurred and people with serious intellectual disabilities. Meanwhile, state litigation has led to judicial abolition in Washington and Delaware, with new efforts underway to secure judicial abolition in California.

Others have focused on legislative abolition of the death penalty, with Colorado abolishing the death penalty in 2020, Virginia becoming the first Southern state to abolish the death penalty in 2021, and Washington, which formally removed the death penalty from its books in 2023 after its supreme court had found the state's death penalty unconstitutional in 2018.

As more and more states abolish the death penalty and fewer states actively execute people on their death rows, arguments are being advanced that the relatively miniscule number of people sentenced to death and the even smaller number executed, make the punishment inherently arbitrary and therefore violates the Eighth Amendment. In his dissent in the 2015 case *Glossip v.*

Gross, which was joined by Justice Ruth Bader Ginsburg, Justice Stephen Breyer, citing the "lack of reliability, the arbitrary application of a serious and irreversible punishment, individual suffering caused by long delays, and lack of penological purpose," concluded that it is "highly likely that the death penalty violates the Eighth Amendment." Though courts have declined to take up this reasoning, as more states abolish the death penalty and fewer people are executed, the case for the death penalty's constitutionality will become harder to make.

C. Criminalizing Poverty

While "cruel and unusual punishment" is frequently discussed in the death penalty context, the concept has also been applied to laws which attempt to criminalize status. In a landmark 1962 case *Robinson v. California*, the Supreme Court struck down a California law which attempted to criminalize being addicted to narcotics.

In the 2024 case *City of Grants Pass, Oregon v. Johnson*, however, the Supreme Court refused to apply *Robinson* to strike down a local ordinance making it illegal for homeless people to sleep outside. The Court's majority reasoned that while Eighth Amendment precedents may prohibit laws which criminalize *status*, they do not prevent the state from criminalizing *conduct*, in this case, the act of sleeping.

Meanwhile dissenting Justices Sotomayor, Kagan, and Jackson focused on legislators' stated intent to make conditions so uncomfortable for unhoused people that they would "move on down the road." The dissenters reasoned that criminalizing essential biological functions like sleep for people who do not have housing is functionally no different from criminalizing homelessness as a status.

This case has already had ripple effects. On July 25, less than a month after the decision in *Grants Pass*, California Governor Gavin Newsom issued an executive order that directly references the Supreme Court's decision in *Grants Pass*. The order directs state agencies to address encampments on state property through removal operations (i.e., destruction of the encampments). The order provides only 48 hours of advanced notice or less in the case of "exigent circumstances" that "poses an imminent threat to life, health, safety or infrastructure." The executive order also encourages local governments to use their resources, including state funds for housing and intervention, "to humanely remove encampments from public spaces."

It is likely that other cities and states will follow suit in pursuing efforts to criminalize the unhoused, including the twenty-four states that filed an amicus brief advocating for the position that Court ultimately took.

D. Holding the Powerful Accountable

While much criticism of the criminal legal system has focused on unjustly harsh outcomes for the poor and people of color, activists have also called for greater accountability for the powerful, including politicians and police officers.

The Court's approach to homeless defendants in *Grants Pass* contrasts with its lenient interpretation of 18 U.S.C. § 666, which makes it a federal crime for state and local officials to corruptly accept payments or things of value in relation to official acts with the intent to be "influenced or rewarded." In *Snyder v. United States*, the Court considered whether the statute covered a $13,000 payment made to James Snyder, a former Indiana mayor after he funneled contracts worth millions to a local truck company.

Citing concerns over federal overreach, the Court's conservative majority ruled 6-3 that although the statute prohibits bribes arranged before a corrupt act, it did not apply to gratuities given after the fact. Dissenting Justices Sotomayor, Kagan, and Jackson criticized the holding for overlooking the plain text of the statute and overriding the intent of Congress.

Until Congress rewrites the statute, the Court's ruling leaves it solely to states and localities to hold public officials accountable using state anticorruption statutes and ordinances. While enforcement of local and state anticorruption and bribery laws is important, where local corruption is so enmeshed that federal intervention is required, the Court has limited the tools available to federal prosecutors.

E. Securing Justice in Policing

In the wake of George Floyd's murder in 2020, states and the federal government considered reforms that would provide for greater police oversight. From May 25, 2020, through the end of that year, the federal government, 36 states, and Washington, D.C., introduced more than 700 bills addressing police accountability, nearly 100 of which were enacted. Many of these bills have focused on restricting or clarifying use-of-force policies, creating an affirmative duty for officers to intervene in cases of police misconduct, and creating more centralized processes to report misconduct.

Progress has been more limited in the movement to eliminate or limit qualified immunity. Qualified immunity is a judge-made rule that provides police officers and other state government actors with a defense when they have committed constitutional violations, including brutal acts of violence. Plaintiffs seeking to vindicate their constitutional rights must demonstrate that the act violated "clearly established law:" As applied, this doctrine renders it nearly impossible to hold government officials accountable, with courts frequently requiring near identical circumstances to find that a law is "clearly established." This leaves those who have experienced violence and misconduct by state actors with no recourse or prospect for recovering damages.

The George Floyd Justice in Policing Act, a comprehensive police reform bill considered by Congress in 2021, failed in part due to disagreement over measures limiting qualified immunity. Similar efforts have so far been largely unsuccessful at the state level, due to heavy resistance from police unions.

Nevertheless, advocates continue to push for change both through the legislative process and in state and federal courts. Colorado, New Mexico, and Connecticut have passed laws limiting or eliminating qualified immunity under state law. And in a recent ruling, the Nevada Supreme Court refused to extend qualified immunity to block money damages for violations of rights arising under its *state* constitution.

In the 2024 decision *Green v. Thomas*, Judge Carlton Reeves of the District Court for the District of Mississippi refused to apply the Supreme Court's qualified immunity doctrine to protect a police detective, finding both that her actions violated clearly established law and that qualified immunity itself had "no basis in law."

Discussion Questions

The Supreme Court has cited federalism concerns in both its decision in *Grants Pass*, returning more power to local officials to set their criminal laws, and in paring back 18 U.S.C. § 666 in *Snyder*. How can the federal government help to incentivize or support criminal justice reform efforts among the states? Are there any key reforms from other states that it would be beneficial to pursue in your states or community? Police resistance has been a major obstacle to changing qualified immunity laws. What kinds of data would be most useful to build support for reform in your community? Are there other reforms that might accomplish similar goals with less resistance? How can criminal justice reformers manage the risk of public backlash?

Resources

Shaila Dewan, *Kamala Harris and the Return of 'Tough on Crime'*, N.Y. TIMES (Aug. 17, 2024); WENDY SAWYER & PETER WAGNER, MASS INCARCERATION: THE WHOLE PIE 2024, PRISON POL'Y INITIATIVE (2024); DEATH PENALTY INFO. CTR., THE DEATH PENALTY IN 2023: YEAR END REPORT (2023); Elaine McArdle, *The End of the Death Penalty?*, HARV. L. BULL. (Feb. 14, 2023); BECKY FELDMAN, THE SECOND LOOK MOVEMENT: A REVIEW OF THE NATION'S SENTENCE REVIEW LAWS, THE SENTENCING PROJECT (2024); Thomas Birmingham, *Cities Rush to Criminalize Homelessness After Supreme Court Ruling*, THE APPEAL (Aug. 27, 2024); *What Communities Need to Know About the Criminalization of Homelessness*, NAT'L ALL. TO END HOMELESSNESS (Aug. 28, 2025, 5:43 PM); Joanna Schwartz, *How Qualified Immunity Fails*, 127 YALE L. J. 2 (Oct. 2017); JASON TIEZZI, ROBERT MCNAMARA, & ELYSE SMITH POHL, UNACCOUNTABLE, INST. FOR JUST. (2024).

Speakers List

The following list includes a variety of scholars, advocates, and litigators you may contact when planning your chapter's events this year. We have provided their title, organization, and the section within this program guide most relevant to their work. The speakers are listed in alphabetical order according to the program guide topic(s) about which they may speak. These categories are necessarily simplistic. When considering any of the experts listed below for your programming, we encourage you to research the speaker to ensure their specialties align with the goals of your event.

This speakers list is not exhaustive. Instead, it is intended to provide you with a sampling of the scholars, advocates, institutions, and organizations that work on these issues. When developing your events, you should also consider local experts and practitioners and consult law school faculty members, including ACS student chapter faculty advisors, for additional suggestions.

Name	Title	Organization	State	Specialty
Aliza Hochman Bloom	Assistant Professor of Law	Northeastern University School of Law	IL	Criminal Law Reform
Brandon Buskey	Director, Criminal Law Reform Project	ACLU	NY	Criminal Law Reform
Frank Cooper	William S. Boyd Professor of Law; Director, Program on Race, Gender, and Policing	UNLV William S. Boyd School of Law	NV	Criminal Law Reform
Andrew Manuel Crespo	Morris Wasserstein Public Interest Professor of Law; Executive Faculty Director, Institute to End Mass Incarceration	Harvard Law School	MA	Criminal Law Reform
Ilana Friedman	Assistant Professor of Law	University of Kentucky J. David Rosenberg College of Law	KY	Criminal Law Reform

Name	Title	Organization	State	Specialty
Joanna Schwartz	Professor of Law	UCLA School of Law	CA	Criminal Law Reform
Megan Stevenson	Henry L. and Grace Doherty Charitable Foundation Professor of Law	University of Virginia School of Law	VA	Criminal Law Reform
Yannick Wood	Director, Criminal Justice Reform Program	New Jersey Institute for Social Justice	NJ	Criminal Law Reform
Ekow Yankah	Thomas M. Cooley Professor of Law	University of Michigan Law School	MI	Criminal Law Reform
John Blume	Samuel F. Leibowitz Professor of Trial Techniques; Director of the Cornell Death Penalty Project	Cornell Law School	NY	Death Penalty
Stephen Bright	Visiting Professor in Law	Yale Law School & Georgetown University Law Center	CT	Death Penalty; Racial Discrimination in Criminal Law
Elisabeth Semel	Chancellor's Clinical Professor of Law and Co-Director of the Death Penalty Clinic	University of California, Berkeley School of Law	CA	Death Penalty; Racial Discrimination in Criminal Law
Carol Steiker	Henry J. Friendly Professor of Law	Harvard Law School	MA	Death Penalty

Name	Title	Organization	State	Specialty
Jordan Steiker	Judge Robert M Parker Endowed Chair in Law; Director of the Capital Punishment Center	University of Texas Law	TX	Death Penalty
Michael J.Z. Mannheimer	Professor of Law	Northern University of Kentucky Chase College of Law	KY	Death Penalty & Policing Accountability
Miriam Seifter	Professor of Law; Faculty Co-Director, State Democracy Research Initiative	University of Wisconsin Law School	WI	Democracy and Voting; State Constitutional Law
Guy-Uriel Charles	Charles Ogletree, Jr. Professor of Law	Harvard Law School	MA	Election Law
Josh Douglas	Ashland, Inc-Spears Distinguished Research Professor of Law and Acting Dean of Research	University of Kentucky Rosenberg College of Law	KY	Election Law; State Constitutional Law; Voting Rights
Anthony Gaughan	Kern Family Chair in Law	Drake University Law School	IA	Election Law
Richard Hasen	Professor of Law; Director, Safeguarding Democracy Project	UCLA School of Law	CA	Election Law
Ellen D. Katz	Ralph W. Aigler Professor of Law	University of Michigan Law School	MI	Election Law

Name	Title	Organization	State	Specialty
Jessica A. Levinson	Clinical Professor of Law; Director, Public Service Institute; Director, Journalist Law School	Loyola Law School	CA	Election Law
Spencer Overton	The Patricia Roberts Harris Research Professor of Law	George Washington University Law School	DC	Election Law
Ciara Torres-Spelliscy	Professor of Law	Stetson University College of Law	FL	Election Law; Constitutional Law
Alex Gulotta	Arizona State Director	All Voting is Local	AZ	Election Law; Voting Rights
Wendy Weiser	Vice President	Brennan Center for Justice	DC	Election Law; Voting Rights; Courts
Maryam Ahranjani	Professor of Law; Ronald and Susan Friedman Professor	University of New Mexico School of Law	NM	Policing Accountability
Kiel Brennan-Marquez	Professor of Law; William T. Golden Scholar; Faculty Director of the Center on Community Safety, Policing and Inequality	University of Connecticut School of Law	CT	Policing Accountability
Craig B. Futterman	Clinical Professor of Law	University of Chicago Law School	IL	Policing Accountability
Samuel V. Jones	Associate Dean for SCALES & Inclusive Excellence; Professor of Law	University of Illinois Chicago School of Law	IL	Policing Accountability

Name	Title	Organization	State	Specialty
Michelle Adams	Henry M. Butzel Professor of Law	University of Michigan Law School	MI	Schools
Bruce D. Baker	Professor and Chair of the Department of Teaching and Learning	University of Miami School of Education and Human Development	FL	Schools
Ralph Richard Banks	Jackson Eli Reynolds Professor of Law	Stanford Law School	CA	Schools
Derek W. Black	Ernest F. Hollings Chair in Constitutional Law	Joseph F. Rice School of Law	SC	Schools
Elise Boddie	James V. Campbell Professor of Law	University of Michigan Law School	MI	Schools
Kristine L. Bowman	Professor of Education Policy & Professor of Law	Michigan State University	MI	Schools
John C. Brittain	Professor of Law	University of the District of Columbia David A. Clarke School of Law	DC	Schools
Deborah Caldwell-Stone	Director, Office for Intellectual Freedom	American Library Association	IL	Schools
Elizabeth Cavell	Deputy Legal Director	Freedom from Religion Foundation	WI	Schools
Theresa Chmara	General Counsel	Freedom to Read Foundation	DC	Schools
Caroline Mala Corbin	Professor of Law	University of Miami School of Law	FL	Schools

Name	Title	Organization	State	Specialty
Susan L. DeJarnatt	Professor of Law	Temple University Beasley School of Law	PA	Schools
Justin Driver	Robert R. Slaughter Professor of Law	Yale Law School	CT	Schools
Robert Garda, Jr.	Fanny Edith Winn Distinguished Professor of Law	Loyola University New Orleans College of Law	LA	Schools
Janel George	Associate Professor of Law	Georgetown University Law Center	DC	Schools
Alison Gill	Vice President, Legal and Policy	American Atheists	DC	Schools
Rachel Godsil	Distinguished Professor of Law	Rutgers Law School	NJ	Schools
Preston Green III	John and Maria Neag Professor of Urban Education	University of Connecticut Neag School of Education	CT	Schools
Steven K. Green	Fred H. Paulus Professor of Law	Willamette University College of Law	OR	Schools
Jessie Hill	Judge Ben C. Green Professor of Law	Case Western Reserve University School of Law	OH	Schools; State Constitutional Law
Osamudia James	Henry P. Brandis Distinguished Professor of Law	University of North Carolina School of Law	NC	Schools
Daniel Kiel	Professor of Law	University of Memphis Cecil C. Humphreys School of Law	TN	Schools; Health of Democracy; Protection of Rights

Name	Title	Organization	State	Specialty
Rebecca Markert	Vice President and Legal Director	Americans United for Separation of Church and State	WI	Schools
Kimberly Norwood	Henry H. Oberschlep Professor of Law	Washington University in St. Louis School of Law	MO	Schools
Myron Orfield	Earl R. Larson Professor of Civil Rights and Civil Liberties Law	University of Minnesota Law School	MN	Schools and Housing Segregation and Discrimination
Wendy Parker	Research Professor of Law	Wake Forest University	NC	Schools
Kimberly J. Robinson	Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law	University of Virgina School of Law	VA	Schools
Richard C. Schragger	Walter L. Brown Professor of Law	University of Virgina School of Law	VA	Schools
Micah J. Schwartzman	Hardy Cross Dillard Professor of Law	University of Virgina School of Law	VA	Schools
Janelle Scott	Robert J. and Mary Catherine Birgeneau Distinguished Chair in Educational Disparities	University of California Berkeley School of Education	CA	Schools
Elizabeth Sepper	Professor of Law	University of Texas School of Law	TX	Schools

Name	Title	Organization	State	Specialty
Matthew Patrick Shaw	Assistant Professor of Law; Assistant Professor of Public Policy and Education	Vanderbilt University Law School and Peabody College	TN	Schools
Sonja B. Starr	Julius Kreeger Professor of Law and Criminology	University of Chicago Law School	IL	Schools
Aaron Tang	Professor of Law	University of California Davis School of Law	CA	Schools
Nelson Tebbe	Jane M.G. Foster Professor of Law	Cornell Law School	NY	Schools
Robert W. Tuttle	David R. and Sherry Kirschner Berz Research Professor of Law and Religion	George Washington University Law School	DC	Schools
Erika K. Wilson	Professor of Law; Wade Edwards Distinguished Scholar	University of North Carolina School of Law	NC	Schools
Rick Su	Arch T. Allen Distinguished Professor of Law	University of North Carolina School of Law	NC	State and Local Government Law
Nestor Davidson	Albert A. Walsh Chair in Real Estate, Land Use, and Property Law; Faculty Director, Urban Law Center	Fordham University School of Law	NY	State and Local Government Law

Name	Title	Organization	State	Specialty
John Dinan	Professor of Politics and International Affairs	Wake Forest University	NC	State Constitutional Law
Robert F. Williams	Distinguished Professor of Law Emeritus	Rutgers Law School	NJ	State Constitutional Law
Quinn Yeargain	1855 Professor of the Law of Democracy and Associate Professor of Law	Michigan State University College of Law	MI	State Constitutional Law; Democracy and Voting
Alicia Bannon	Director, Judiciary Program, Democracy, Brennan Center; Editor in Chief and a Founding Editor of State Court Report	Brennan Center for Justice	NY	State Courts & Constitutional Law
Travis Crum	Associate Professor of Law	Washington University in St. Louis School of Law	MO	Voting Rights
Luis Fuentes-Rowher	Professor of Law, Class of 1950 Herman B Wells Endowed Professor	Indiana University Maurer School of Law	IN	Voting Rights
Sophia Lin Lakin	Director, Voting Rights Project	ACLU	DC/NY	Voting Rights
Douglas Spencer	Professor of Law; Associate Dean for Faculty Affairs and Research	University of Colorado Law School	CO	Voting Rights
Nick Warren	Staff Attorney	ACLU of Florida	FL	Voting Rights
Poy Winichakul	Senior Voting Rights Attorney	Southern Poverty Law Center	GA	Voting Rights

About the American Constitution Society

The American Constitution Society for Law and Policy (ACS) is a 501(c)3 non-profit, nonpartisan legal organization. Through a diverse nationwide network of progressive lawyers, law students, judges, scholars, advocates, and many others, our mission is to support and advocate for laws and legal systems that strengthen our democratic legitimacy, uphold the rule of law, and redress the founding failures of our Constitution and enduring inequities in our laws in pursuit of realized equality.

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