

# SUPREME COURT REVIEW HIGH FIVE!



MARSHALL H. TANICK, ESQ.  
MEYER NJUS TANICK

Five Key cases 2020-21 Term

Hennepin County Law Library

December 17, 2021

# TABLE OF CONTENTS

▣ Sports of Sorts: NCAA v. Alston . . . . .	1
▣ School Days: Mahaney Area School District v. B. L. . . . .	2
▣ Give Me That Old Time Religion: Roman Catholic Diocese of Brooklyn v. Cuomo . . . . .	3
▣ Fostering v. Freedom: Fulton v. City of Philadelphia . . . . .	4
▣ It's Not Defamatory, Defamation	
▣ TransUnion v. Ramirez . . . . .	5
Looking ahead for 2021-22 . . . . .	6

# *Sports of Sorts: NCAA v. Alston*

## *141 S.Ct. 2141 (June 21, 2021)*

**How It Arose:** Antitrust lawsuit by current, former college athletes challenging NCAA limitations on non-educational related benefits like scholarships, etc.

**Proceeding Below:** Lower court finds Sherman Act violation, 9th Circuit affirms

**Holding:** Affirmed, 9-0. Written by Justice Gorsuch

**Rationale:** NCAA limitations violate anti-trust laws because “substantially less restrictive alternative rules” could achieve NCAA-stated goal of “pro-competitive purpose” of maximizing consumer demand (fans following)

**Concurring/Dissenting:** Justice Kavanaugh concurs: “Price fixing *labor* is ordinarily a textbook antitrust problem” by proscribing athletes from being able to “obtain fair compensation for their *work.*”

**Takeaways:** 1) Erosion of NCAA Authority;  
2) Compensation for college athletes\$ 3) Spectre of Unions

# School Days

## Mahaney Area School District v. B.L. by and through Levy

141 S.Ct. 2038 (June 23, 2021)

**How It Arose:** Student who fails to make varsity cheerleading squad goes on rant off-campus on weekend posting, profanity-laced diatribe, resulting in one year cheerleading suspension

**Proceeding Below:** Lower court overturns discipline, Third Circuit affirms.

**Holding:** Affirmed, 8-1, Written by Justice Breyer

**Rationale:** School's interest in avoiding disruption under Tinker v. Des Moines Ind. Comm. School District (1969) does not outweigh First Amendment right of student: off-campus, non-school hours. "It is necessary to protect the superfluous in order to protect the necessary."

**Concurring/Dissenting:** Justices Alito, Gorsuch concur: "Speech on such matters lies at the heart of the First Amendment's protection

Thomas dissents: "Schools historically could discipline students in circumstances like those presented here ... "more authority ... [over] social media," "active on extracurricular programs."

**Takeaways:** 1) Broader rights for student expression;  
2) Implication for off-duty employment



# *Give Me That Old Time Religion: Roman Catholic Diocese of Brooklyn v. Cuomo*

141 S.Ct. 63 (Nov. 25, 2020)

**How It Arose:** Brooklyn Catholic Diocese and two Orthodox Jewish synagogues challenge limits on attendance at religion service during COVID.

**Proceeding Below:** District court upholds restrictions, Emergency appeal granted while appeal pending before 2nd Circuit.

**Holding:** Enforcement enjoined, 5-4 per curiam.

**Rationale:** The “challenged restrictions violate the minimum requirement of neutrality to religion ... because they single out houses of worship for especially harsh treatment”

**Concurring/Dissenting:** Justice Gorsuch, Kavanaugh concur. Constitution cannot be “disregarded” during pandemic. Roberts dissents on mootness. Breyer dissents with 2 other liberals on mootness and “discretion” of officials on medical, scientific matters.

**Takeaways:** 1) Limitation of “Emergency” Powers;  
2) Post pandemic implications?

# *Fostering v. Freedom*

## *Fulton v. City of Philadelphia*

*141 S.Ct. 1868 (June 17, 2021)*

**How It Arose:** Catholic social services agency challenges city of Philadelphia's refusal to allow same sex couples from serving as foster parents.

**Proceeding Below:** Lower court rejects claim; Third Circuit affirms.

**Holding:** Reversed, 9-0. Chief Justice Roberts writes opinion

**Rationale:** City's refusal violates First Amendment Free Exercise clause because it has "burdened [the agency's] religious exercise by forcing to choose between "curtailing its mission or approving of relationships inconsistent with its beliefs."

**Concurring/Dissenting:** Many concurrences, no dissents. Gorsuch advocates addressing and overturning *Emp. Division v. Smith* (1990, exempting "neutral ... generally applicable laws" from First Amendment challenge

**Takeaways:** 1) Diminution of LGBTQ rights;  
2) Religious rights expanded

# *It's Not Defamatory Defamation*

## *Trans Union, LLC v. Ramirez*

141 S.Ct. 2190 (June 25, 2021)

**How It Arose:** Credit reporting agency mistakenly reports that consumer credit applicant is drug trafficking “match” for individual on terrorist watch list; class action sought for 8,000 – plus under Fair Credit Reporting Act barring false, misleading data

**Proceeding Below:** Jury verdict in California of \$60 million, reduced to \$40 million by 9th Circuit affirmance

**Holding:** Reversed, remanded. 5-4 decision written by Justice Kavanaugh

**Rationale:** 80% of class members lack standing due to no “concrete harm” sine credit report not circulated. The case for 20% can proceed because they suffered harm like a “defamatory statement.”

**Concurring/Dissenting:** Thomas dissents due to inequities of mistreatment of “law abiding citizens.” Kagan dissents: not speculative that “company” will in fact sell a credit report to a third party” in future.

**Takeaways:** 1) Class action restrictions;  
2) Standing limitations.

# Looking Ahead: 5 for 2022

Gun Control/Safety:

***New York Rifles & Pistol Assn. v. Cordett,***  
*No. 20-843 "Proper cause" required for  
conceal/carry firearm license*

*Abortion, Reproductive Rights:*

***Dobbs v. Jackson Women's Health  
Organization, No. 19-1392,*** Bans abortions  
after 15 weeks; Roe limit is 24 weeks

**Issue:** "Whether all pre-viability prohibition or  
electives abortions are constitutional?"



# Looking Ahead 2022

Billboard Advertising:

***City of Austin v. Regan National Advertising of Texas***, No. 20-1029

- ▣ *Differential treatment of digitized "on-premises" and "off premises" billboards*

**Immigration Removal:**

***Patel v. United States***, No. 17-10636

*Right of "discretionary" review of immigration reversal (deportation) decisions*

*Death Penalty:*

*United States v. Tsarnaev*, No. 20-443

*Boston marathon bomber, "pretrial publicity"*

**See you next year!**

**2021 – 2022**

**Supreme Court Review**

