

Updated: April 18, 2012

U.S. SUPREME COURT AMICUS CASES – MERITS – 2011-2012 TERM

Case Name	Won	Loss	Other	Issue	Comment
Fisher v. University of Texas at Austin (pending)				Equal Protection – does Court's decisions interpreting the Equal Protection Clause of the Fourth Amendment, including <i>Grutter v. Bollinger</i> , 539 U.S. 306, 71 U.S.L.W. 1788 (2003), permit the University of Texas at Austin's use of race in undergraduate admissions decisions	
Filarsky v. Delia (2012)	X			Qualified Immunity – is outside counsel hired with government employees in conducting an internal affairs investigation precluded from asserting qualified immunity solely because of his status as a "private" lawyer rather than a government employee	Decided April 17, 2012 – Unanimous Court held that individuals retained to work for government on a temporary basis are entitled to qualified immunity from suit under § 1983 on the same basis as permanent public employees

U.S. SUPREME COURT AMICUS CASES – CERTIORARI PETITION - 2011-2012 TERM

Case Name	Won	Lost	Other	Issue	Comment
Payne v. Peninsula Sch. Dist. (2012)		X		IDEA - exhaustion of administrative remedies— implementation of behavioral modification interventions	Petition for certiorari denied February 21, 2012
Blue Mountain Sch. Dist. V. J.S./Hermitage sch. Dist. V. Layshock (2012)		X		First Amendment Free Speech Clause – student speech – does Tinker and/or Fraser apply to offcampus, online student speech – school officials authority to regulate, restrict such speech without offending student’s free speech rights	Petition for certiorari denied January 17, 2012

U.S. COURTS OF APPEALS AMICUS CASES – 2011-2012

Case Name	Won	Lost	Other	Issue	Comment
D.L. v. Baltimore Cnty. Bd. Sch. Commissioners (pending)				Section 504 of the Rehabilitation Act of 1973 - Whether disabled student enrolled in private school is entitled to services under Section 504 on the same basis as a disabled student enrolled in public school	
Hispanic Interest Coalition of Alabama v. Bentley (11th Cir. pending)				Fourteenth Amendment Equal Protection Clause – Alabama immigration law’s requirement that school officials verify students’ immigration status and report undocumented students is unconstitutional under Plyler v. Doe	
R.K. v. Board of Educ. of Scott Ctny, Ky. (6th Cir. pending)				ADA/Section 504: Right of student receiving disability-related services to attend neighborhood school - financial burden on school district	
Jefferson Ctny Sch, Dist. R-1 v. Elizabeth E. (10th Cir. pending)				IDEA - medical care - unilateral placement of student receiving special education services in mental health facility - reimbursement when placement is primarily for education purposes	

U.S. COURTS OF APPEALS AMICUS CASES – 2011-2012 CONTINUED

Case Name	Won	Lost	Other	Issue	Comment
Doe v. Covington Cnty. Sch. Dist. (5th Cir. 2012)	X			Fourteenth Amendment Due Process Clause - special relationship theory of liability for acts of third parties - state created danger exception based on school district's ID check policy for visitors	Decided March 23, 2012 – Fifth Circuit sitting en banc held that a school district did not have a duty to protect an elementary school student from sexual abuse by a private actor based on the constitutional theory that the school had a special relationship with the student. The Fifth Circuit therefore rejected the student’s claim on that theory, as well as the claims alleging a state-created danger and municipal liability.
Morgan v. Swanson (5th Cir <i>en banc</i> 2011)			X	First Amendment Establishment Clause and Free Speech Clause - qualified immunity for school officials making decisions that require reconciling free speech and government endorsement of religion concerns	Decided September 27, 2011 - divided Fifth Circuit, sitting en banc, reversed a lower court’s decision denying two elementary school principals qualified immunity from a free speech suit brought by two students. A majority of the appellate court agreed that the law was not “clearly established” at the time the principals banned the students from distributing religious materials on school grounds. A separate majority, rejecting the principals’ argument that elementary school students do not enjoy First Amendment free speech rights, held that such rights do extend to elementary school students under Tinker.

U.S. COURTS OF APPEALS AMICUS CASES – 2011-2012 CONTINUED

Case Name	Won	Lost	Other	Issue	Comment
Johnson v. Poway Unified School District (9th Cir. 2011)	X			First Amendment - employee free speech - authority of school district to regulate teacher classroom expression	Decided September 13, 2011 - unanimous three-judge panel held that a California school district did not violate a high school teacher's free speech or equal protection rights, or the Establishment Clause when the school's principal ordered the teacher to remove banners displayed in his classroom that contained religious references.
Payne v. Peninsula Sch. Dist. (9th Cir. 2011)		X		IDEA - exhaustion of administrative remedies— implementation of behavioral modification interventions	Decided July 29, 2011 - In a split decision, the majority of the Ninth Circuit, sitting <i>en banc</i> , held IDEA's exhaustion of administrative remedies requirement is not jurisdictional and, instead, is an affirmative defense that must be raised by a school district or is waived. It also ruled that IDEA's exhaustion requirement only applies when the relief sought by a plaintiff is available under IDEA. It concluded that non-IDEA claims that are not seeking relief under IDEA are not subject to the exhaustion requirement. Therefore, the court held, "although the district court properly dismissed Payne's IDEA-based § 1983 claim, it should not have dismissed her non-IDEA claims on exhaustion grounds."
Purdham v. Fairfax Cnty Sch. Bd. (4th Cir. 2011)	X			Fair Labor Standards Act - interpretation of nominal fee - payment of stipends to school support staff who volunteer as coaches/advisors for athletic and extracurricular activities	Decided March 17, 2011 – unanimous three-judge panel held that a high school safety and security assistant, who also holds the position of varsity boys golf coach, is not an employee in his capacity as a coach under the Fair Labor Standards Act (FLSA), but rather a volunteer and, therefore, is not entitled to overtime pay under the FLSA.

STATE SUPREME COURTS AMICUS CASES - 2011-2012

Case Name	Won	Lost	Other	Issue	Comment
Abbeville County S.D. v. State (S.C. pending)				School Finance – state funding scheme – “minimally adequate education” standard	
Dydell v. Taylor (Mo. 2011)	X			Coverdell Teacher Protection Act - applicability to school administrators for acts and omissions in disciplining students; interaction with state official immunity laws	Decided February 8, 2011 - Missouri Supreme Court held that the federal Coverdell Teacher Protection Act (CTPA) is a valid exercise of the U.S. Congress’s power under the Spending Clause of the U.S. Constitution. As a result, it concluded that a school district superintendent was entitled to immunity under the CTPA from a negligence suit brought by a student who was injured during an assault by another student.