Clearinghouse

School Law Bulletin *looks at recent court decisions and attorney general's opinions*

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Cases and Opinions That Affect North Carolina

U.S. Supreme Court finds law school's race-conscious admissions process constitutional. Grutter v. Bollinger, 123 S. Ct. 2325 (2003).

Facts: The University of Michigan Law School's admission policy aspires to create a diverse student body. Although the policy gives substantial weight to several other indicators of diversity (e.g., experience living or traveling widely abroad, foreign-language fluency, extensive community service, a successful career in another field), it explicitly affirms the law school's commitment to enrolling a "critical mass" of students from underrepresented racial and ethnic minority groups. The policy sets no specific number for minority enrollment and uses race only as a plus factor. Minority candidates are not placed on a separate, insulated admission track. All applicants receive individualized consideration and attention to the ways in which they might contribute to a diverse educational environment.

Two nonminority applicants denied admission under the policy filed suit, alleging that the race-conscious policy violated their equal protection rights. As in many recent cases involving race-conscious admission policies, the legal questions were: (1) Can diversity ever constitute a compelling governmental interest sufficient to justify the use of race-conscious admissions? (2) If so, when is a program sufficiently narrowly tailored to survive strict constitutional scrutiny?

Holding: The U.S. Supreme Court held that the law school had a compelling interest in attaining a diverse student body and that its admission policy was sufficiently narrowly tailored to be constitutional.

Because the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall deny equal protection of the laws, any governmental action based on race is prohibited unless it is narrowly tailored to serve a compelling interest.

The university put forward only one justification for its race-conscious admission policy: obtaining the educational benefits that flow from a diverse student body. The Court found this justification persuasive, reiterating its statement in *Brown v. Board of Education*, that "education . . . is the very foundation of good citizenship." The Court determined that the law school's admission policy promoted cross-racial understanding and broke down racial stereotypes. Thus students educated in such an environment were better prepared to function in a diverse workforce and a diverse society. Further, the Court noted the importance of law schools, in particular, as breeding grounds for political and social leaders. Ensuring that paths to leadership are open to qualified individuals of every race and ethnic origin cultivates leaders with legitimacy in the eyes of the citizenry.

Having shown a compelling interest in using race in its admission policy, the law school still needed to show that its policy was narrowly tailored to serve that interest. Case law has established that quota systems that insulate one category of applicants from competition with all other applicants are not narrowly tailored. Although admissions officers did pay some attention to the number of underrepresented minority candidates admitted, law school witnesses testified without contradiction that numbers never caused them to give more or less weight to race as a consideration. This contention was supported by evidence showing that the number of underrepresented minority students enrolled in the law school differed substantially from their representation in the applicant pool and varied considerably from year to year.

Not only did the admission policy avoid operating as an impermissible quota system, it also avoided using race in a way that separated minority candidates and insulated them from competition with all other applicants. No specific weight was given to an applicant's racial or ethnic origin, just as there was no policy of automatic acceptance based on any of the

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diversity factors the law school considered. This was proven by the fact that the law school frequently admitted nonminority applicants with grades and test scores lower than those of underrepresented minority (and nonminority) applicants who were rejected.

The Court concluded on a cautionary note. The ultimate purpose of the Equal Protection Clause, said the Court, is to eliminate all race-based governmental discrimination. Therefore, race-based admission policies must be limited in time. The Court accepted the law school's promise that it would cease considering race as soon as practicable; but the Court went on to state its expectation that twenty-five years from now the use of racial-preferences would no longer be necessary to further the compelling interest of attaining a diverse student body.

[Editor's Note: In a companion case, Gratz v. Bollinger, *123 S. Ct. 2411 (2003), the Court struck down a race-conscious admission policy used by the University of Michigan's undergraduate College of Literature, Science, and Arts (LSA). Although the LSA showed a compelling interest in attaining a diverse student body, the Court found that its admission policy—which gave underrepresented minority students an automatic twenty-point boost in their admission ratings—was not sufficiently narrowly tailored to survive strict scrutiny. Twenty points was fully one-fifth of the points needed to guarantee admission, noted the Court, and was a margin large enough to effectively isolate minimally qualified minority applicants from competition with the rest of the applicant pool. The LSA policy did not exhibit the kind of flexible, individualized consideration that the Court found in the law school's admission policy.]*

"Stay put" provision of the Individuals with Disabilities Education Act does not require school to find alternative, equivalent placement when current placement becomes unavailable. Wagner v. Board of Education of Montgomery County, 335 F.3d 297 (4th Cir. 2003).

Facts: Daniel Wagner is an autistic child receiving special education services in the Montgomery County (Md.) school system. Under the individualized education plan (IEP) developed by the school board, Daniel was receiving in-home Lovaas therapy from Community Services for Autistic Adults and Children (CSAAC), until CSAAC declined to provide further services. At that point, the board offered a new IEP and the Wagners began due process proceedings to challenge it. At the same time, they sought an injunction under § 1415(j) of the Individuals with Disabilities Education Act (IDEA), which provides that during the course of due process proceedings, a child shall stay in his or her then-current placement unless the parents and school officials agree otherwise.

Because Daniel's then-current placement was no longer available, the federal court for the district of Maryland determined that the board was obligated to provide an alternative, equivalent placement for Daniel. The board appealed the ruling.

Holding: The Fourth Circuit Court of Appeals vacated the district court's injunction.

This situation, noted the court, is atypical because the board was not trying to change Daniel's placement; the placement had become unavailable through no fault of the board. In such a situation, the protection of § 1415(j)—which holds a child's placement static without any required showing on the parents' part—does not apply. The stay-put provision does not impose any affirmative obligations on a board, it merely prohibits the board from moving the student in question. An order like the district court's, which requires moving the student, is completely at odds with this prohibition.

That § 1415(j) does not provide for an alternative equivalent placement is supported by evidence that Congress had clearly provided for interim alternative educational settings when it deemed them appropriate—for example, in § 1415(k), when a child's then-current placement is substantially likely to result in injury to the child or others. The absence of explicit authorization for such interim placements in § 1415(j) means that the courts do not have the authority to make them under that provision.

Parents like the Wagners are not, however, left without a remedy. They could, under § 1415(j), agree with the school to an alternative placement; or they could seek a preliminary injunction from the court changing the child's placement. Under § 1415(i), the court is empowered to grant such relief as it deems appropriate. Unlike the stay-put provision, however, § 1415(i) requires the parents to make a showing that they are entitled to relief.

Individuals with Disabilities Education Act does not require that a school board's procedural safeguards pamphlet contain explicit notice of a limitations period for filing protests or requests. R. R. v. Fairfax County School Board, 338 F.3d 325 (4th Cir. 2003).

Facts: Following a dispute about an individualized education plan (IEP) proposed by the Fairfax County (Va.) school board for his autistic son, Mr. R. received a letter and pamphlet from the board outlining the due process rights and procedural remedies available to him in protesting the IEP. The letter contained no mention of the limitations period that applied to Mr. R.'s right to request a due process hearing. Twenty-nine months after Mr. R. rejected the board's IEP, he filed a request for a due process hearing, seeking reimbursement for private school tuition he had paid after he removed his son from the board's school. The board moved to dismiss his claim as time-barred under Virginia's two-year limitation period.

Mr. R. protested, arguing that the board was estopped from asserting the time limitation because it had failed to notify him of it; alternatively, he argued that his cause of action did

not accrue until he had actually paid the educational expenses for which he sought reimbursement (only fourteen months after he rejected the board's proposed IEP). The federal court for the Eastern District of Virginia granted judgment to Mr. R. before trial, finding that the Individuals with Disabilities Education Act (IDEA) required the board to provide notice of all applicable limitations periods. The board appealed.

Holding: The Fourth Circuit Court of Appeals reversed the trial court.

The court concluded that because neither the IDEA nor its regulations contain any specific requirement that boards provide notice of the limitation period for requesting a due process hearing, there was no textual basis for imposing such a requirement. The court also concluded that such a notice was not required to satisfy the spirit of the IDEA (i.e., the intent to give unrepresented parents the ability to participate in educational decision making for their children). Other courts have held that the policies and spirit of the IDEA may require notice of limitations periods when they are short. The Fourth Circuit, however, had already determined in another case that a one-year limitation period, without a notice requirement, was consistent with the IDEA. Therefore, the lack of notice under the two-year limitation period presented no problem.

The court also rejected Mr. R.'s argument as to the date his claim accrued. An IDEA claim accrues when a parent knows of the injury or event that is the basis of his or her claim. The injury here occurred when Mr. R. rejected the board's IEP as inadequate. The date on which he paid tuition for the private school he subsequently chose for R. R. is irrelevant.

Court affirms school merger approved by the State Board of Education. Kings Mountain Board of Education v. North Carolina State Board of Education, ___ N.C. App. ___, 583 S.E.2d 629 (2003).

Facts: The Kings Mountain Board of Education appealed a decision made by the Cleveland County Board of Commissioners, and approved by the North Carolina State Board of Education, to merge three independent school systems in Cleveland County: the Cleveland County Schools, Shelby City Schools, and Kings Mountain District (KMD) Schools. The board of KMD contended that the merger was unlawful because the district lay in both Cleveland County and neighboring Gaston County and Gaston County had not approved it. The trial court concluded that KMD lay entirely within Cleveland County and affirmed the merger. The KMD board appealed.

Holding: The North Carolina Court of Appeals upheld the trial court's ruling.

The KMD board argued that under a 1905 law the boundaries of KMD were the same as the boundaries of the town of Kings Mountain; thus when the town annexed territory in Gaston County, KMD expanded into that county as well. The court disagreed, noting that the power to create the boundaries of a school district lies solely with the legislature; absent an express or implied delegation of this authority, a municipality does not have such power. No delegation occurred in this case because at the time of the 1905 law the town of Kings Mountain had no power to annex territory. As the town then had no authority to expand its own boundaries, the legislature could not have intended to grant it the power to unilaterally expand the boundaries of the school district. The legislature has in the past explicitly granted municipalities such authority, but it had not done so for Kings Mountain.

The KMD board also argued that the State Board was equitably estopped from approving the merger because it had implicitly recognized the existence of KMD within Gaston County by annually certifying a number of Gaston County students in KMD under G.S. 115C-430 (which determines funding allocation among districts when there is more than one local school administrative unit in a county). The court concluded that the Board was not subject to equitable estoppel. That doctrine precludes a party from exercising a legal right when it has knowingly made a false representation to another with the intent that the other will rely and act upon the false representation. There is, however, no evidence that the State Board intended to represent to KMD that its boundaries extended into Gaston County: The annual certification was made to the Gaston County Board of Commissioners, not to KMD officials, and it was not made pursuant to any independent determination of boundary lines.

Court affirms in part and reverses in part immunity rulings in personal injury case. Ripellino v. the North Carolina School Boards Association, ___ N.C. App. ___, 581 S.E.2d 88 (2003).

Facts: Nicole Ripellino, a student in the Johnston County schools, was struck by a traffic control gate as she was leaving school in her car. The Johnston County Board of Education paid the Ripellinos approximately $2,000 for property damage but refused to pay any of Nicole's medical expenses. The Ripellinos sued the board, the North Carolina School Boards Association (NCSBA), and the North Carolina School Board Trust (NCSBT), seeking compensatory and punitive damages. They alleged state tort claims and deprivation of their equal protection and due process rights under 42 U.S.C. § 1983. The trial court dismissed all of the Ripellinos's claims before trial on the grounds that the defendants were immune from suit. The Ripellinos appealed.

Holding: The North Carolina Supreme Court affirmed in part and reversed in part.

As a general rule, sovereign immunity bars suit against state and county agencies, including local boards of education. A local board of education may waive immunity through the

purchase of liability insurance. The board here was a member of the North Carolina School Boards Trust for the purposes of covering claims alleging damages of less than $100,000 or more than $1 million. The court rejected the Ripellinos's claim that this coverage constituted liability insurance, finding that they had failed to show that NCSBT was either authorized to execute insurance contracts or was a qualified insurer as determined by the state Department of Insurance.

The court did find, however, that the trial court erred in dismissing any claims the Ripellinos made for damages between the amounts of $100,000 and $1 million, as under the terms of board's agreement with NCSBT, excess insurance may have covered these claims, and thus immunity may have been waived.

The Ripellinos attempted to avoid the immunity claim entirely by asserting that the board's partial property damage payment to them estopped it from asserting immunity. The court stated that only the legislature may establish how immunity is waived and that no provision had been made for waiver in instances of partial payment.

The board was not entitled to immunity, however, on the Ripellinos's constitutional claims. Under § 1983, municipalities and municipal agencies are subject to suit for monetary damages. Thus the Ripellinos's claim that the board violated their equal protection and due process rights by paying some claims and not others should have been allowed to proceed.

Finally, the court affirmed the dismissal of the punitive damage claim against the defendants. The North Carolina Supreme Court has held that municipal agencies are immune from punitive damages.

Court makes various pre-trial rulings on sexual harassment claims by former graduate student. Mandsager v. University of North Carolina at Greensboro, 269 F. Supp. 2d 662 (M.D.N.C. 2003).

Facts: According to the facts alleged in her complaint, Naomi Mandsager was a Ph.D. candidate in the Department of Counseling and Educational Development (CED) at the University of North Carolina at Greensboro (UNCG). As of December 1998 she had completed all course work necessary for her degree, except for one research methodology course, which she had received permission to take as an independent study (because of a math learning disability). While a graduate student in CED, Mandsager worked as a graduate assistant, a clinical supervisor, and a teaching assistant. William Purkey, a full-time professor, was her direct supervisor.

During the 1998–1999 academic year, Mandsager complained on more than one occasion to Diane Borders, chair of the CED, that Purkey signed his correspondence to her "love, William," often put his arm around her, called her "honey," and ultimately made a direct sexual proposition to her. In response to Mandsager's first complaint, Borders said "William will be William." Thereafter she told Mandsager that she would have to put her complaint in writing, which she did. Borders informed Mandsager that Purkey would be reprimanded.

In the meantime, however, Mandsager suffered several setbacks in pursuit of her degree. Among other things, she was told to find employment outside CED and informed that she would not be allowed to take her research methodology course as an independent study. Three of the four professors on her doctoral committee resigned. Borders told Mandsager that the CED faculty was uncomfortable having her in the program.

Mandsager then took her case to Brad Bartel, Dean of the Graduate School at UNCG, who told her that, in choosing to complain about Purkey, she had effectively decided not to pursue her degree. Mandsager took her complaint to court, alleging various violations of Title VII, Title IX, and 42 U.S.C. § 1983, as well as a state law claim of negligent or intentional infliction of emotional distress. The defendants moved to have her claims dismissed before trial.

Holding: The court dismissed some claims and refused to dismiss others.

Title VII Claims: The court refused to dismiss Mandsager's Title VII claims. Her first claim alleged that UNCG, Borders, and Bartel had created a sexually hostile work environment. [Note: employees (e.g., Purkey) cannot be held directly liable under Title VII.] The defendants contended that Purkey's treatment of her, if harassing, was not sufficiently pervasive or severe to create an abusive work environment. The court found that the facts alleged by Mandsager were sufficient to allow her to go to trial to prove them. Further, her allegations concerning the handling of her complaints created a basis for imputing liability to Borders and Bartel: Borders, as head of CED, had actual knowledge of the conduct and took no steps to stop it, while indicating with her "William will be William" statement that she had knowledge of prior inappropriate behavior by Purkey. Bartel also failed to take corrective action.

Mandsager's second Title VII claim was for retaliation. At this stage of the proceedings, her allegation that she suffered adverse employment actions within three to four months of filing her complaint was enough to establish a causal connection between her filing of the sexual harassment complaint and the alleged retaliation.

Title IX Claims: Under Title IX, which prohibits sex discrimination in educational programs that receive federal funding, an educational institution can only be held liable for employee harassment of a student when the institution's response to the harassment is so inadequate that it amounts to deliberate indifference. Based on Mandsager's complaint, the defendant's response entitles her to go forward with this claim.

Section 1983 Claims: The defendants argued that the court should dismiss Mandsager's § 1983 claims because they covered the same behavior complained of in her Title VII and Title IX complaints. However, the court noted, sexual harassment not only violates those legislative provisions, it also violates the Equal Protection Clause of the Fourteenth Amendment. Therefore Mandsager should not be precluded from pursuing a remedy for this constitutional violation.

The court also rejected Borders's and Bartel's argument that the § 1983 claims against them in their personal capacity should be dismissed because they were immune from them. To the contrary, said the court: The U.S. Supreme Court has held that state officers can be held personally liable for actions taken during the course of their employment. Thus Borders and Bartel are not protected by governmental immunity; nor are they entitled to qualified immunity, because reasonable officials in their position would have known that the conduct Mandsager complained of violated her right to equal protection of the laws.

The court did, however, dismiss the § 1983 claims against Bartel on substantive grounds. Section 1983 allows for supervisory liability and direct liability in cases like Mandsager's. To establish supervisory liability, a claimant must show that the supervisor had actual knowledge of the conduct complained of, that the response showed deliberate indifference or tacit authorization of the conduct, and that the supervisor's inaction led to the injury suffered. Mandsager went to see Bartel only after Purkey had sexually propositioned her. She alleges no offensive conduct from Purkey after she saw Bartel. Mandsager also failed to establish direct liability for Bartel, because the statements he made in response to her complaint, while reprehensible, did not meet the offensiveness and pervasiveness criteria required under § 1983.

Infliction of Emotional Distress Claims: The court declined to dismiss these claims, finding first, that there was insufficient information in the pleadings to determine whether any of the defendants were entitled to immunity. As to the substance of the complaint, the court found that Mandsager's allegations adequately showed extreme and outrageous conduct that was intended to, and did, cause severe emotional distress to her.

Court affirms dismissal of claims against football coach. Draughon v. Harnett County Board of Education, ___ N.C. App. ___, 582 S.E.2d 343 (2003).

Facts: Max Draughon, a student football player in the Harnett County school system, died after having a heatstroke during practice. His mother, Lynn Draughon, sued the board and several school officials, among them Brian Strickland, an assistant football coach. She alleged that Strickland negligently failed to allow Max to get water while running wind sprints, and further failed to recognize the symptoms of heat stroke before he collapsed, thus causing his death. Strickland moved to have the case dismissed before trial, and the trial court granted his motion. Draughon appealed.

Holding: The North Carolina Court of Appeals affirmed the dismissal. Strickland presented evidence refuting the claims in Draughon's complaint. Draughon was thus required to produce evidence, other than her own conclusory allegations, in support of her claim. Draughon not only failed to produce such evidence, but also admitted in her own deposition that she could not establish that Strickland committed the acts she alleged. Her case was appropriately dismissed, held the court.

North Carolina Court of Appeals affirms, in an unpublished opinion, that a school board's participation in the North Carolina School Boards Trust is not a purchase of liability insurance that waives immunity. Bass v. the New Hanover County Board of Education, ___N.C. App. ___, 580 S.E.2d 431 (2003).

Facts: Christine Bass, a teacher in the New Hanover County school system, was denied access to campus for several days after an altercation with a black student. Bass had attempted to quiet the student, who was causing a disruption in the hallway, and the student accused Bass of slapping her face. Witnesses did not support the student's claim, but Principal Maryann Nunnally had Bass escorted off campus because of fear that the incident would ignite racial tensions in the school body. Bass was never suspended or disciplined, but the board's public information officer did tell various media sources that she was suspended because she had engaged in a "fight" with a student.

Bass thereafter brought suit against the board and Nunnally, in her official capacity, alleging negligent infliction of emotional distress and defamation. The board and Nunnally moved to dismiss the suit on the basis of immunity. The trial court dismissed the suit and Bass appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the dismissal.

The board asserted that its participation in the North Carolina School Boards Trust (NCSBT) did not constitute a purchase of liability insurance that waived its immunity, as provided under G.S. 115C-42. Case law supports this position, held the court. Therefore the board and Nunnally, who was sued in her official capacity, are protected from suit.

Injured employee failed to show total and permanent disability. Hunt v. North Carolina State University, ___ N.C. App. ___, 582 S.E.2d 380 (2003).

Facts: Dorothy Hunt injured her back as a result of a fall at her place of employment, North Carolina State University

(NCSU). Hunt continued to work for approximately a year and a half after her injury, when she was placed on state disability retirement. The Industrial Commission awarded Hunt permanent partial disability compensation for her injuries. She appealed, seeking compensation for permanent total disability.

Holding: The North Carolina Court of Appeals denied Hunt's request.

On appeal, the commission's findings are conclusive if they are supported by competent evidence. The only evidence Hunt pointed to on the matter of permanent and total disability came from a Dr. Yellig, who ultimately concluded that Hunt was not permanently and totally disabled. Thus the commission correctly determined that Hunt had failed to make her case. Furthermore, the fact that Hunt continued to work at her regular job for a year and a half after her injury supported the commission's finding that she was not permanently and totally disabled as a result of injuries related to her accident.

North Carolina Court of Appeals makes immunity rulings in unpublished opinion. Petho v. Wakeman, ___ N.C. App. ___, 583 S.E.2d 427 (2003).

Facts: The plaintiff filed a wrongful death case against the Charlotte-Mecklenburg Board of Education (CMBE) and one of its teachers, Shawnee Wakemen. The suit alleged that Wakeman had negligently failed to assist Jaycoby Williams, a seven-year-old special education student, when he was choking on his lunch. The trial court denied defense motions to dismiss based on claims that Wakeman was entitled to public official immunity from suit and that the board was entitled to sovereign immunity for claims of more than $1 million. The defendants appealed.

Holding: In an unpublished opinion (i.e., one that has no precedential value), the North Carolina Court of Appeals affirmed the trial court's rulings.

The North Carolina Supreme Court has held that teachers are not entitled to governmental immunity and may be held personally liable when they negligently perform their duties. Therefore Wakeman, as a teacher, was not protected by governmental immunity.

Local boards of education, on the other hand, are protected by governmental immunity unless it has been waived. Immunity is most commonly waived by the purchase of liability insurance. In this case, CMBE failed to produce sufficient evidence that it was not covered by insurance for damages in excess of $1 million. It did not submit a copy of its insurance policy stating a coverage limit and failed to present any other adequate evidence of its policy's terms. Therefore, the plaintiffs are entitled to go to trial on their claims for damages totaling more than $1 million.

Other Cases

State Pledge of Allegiance statute violates the constitutional rights of students, parents, and private schools. The Circle School v. Phillips, 270 F. Supp. 2d 616 (E.D. Pa. 2003).

Facts: The Pennsylvania legislature enacted a law mandating that all schools (with the exception of certain religious schools) administer and students recite the Pledge of Allegiance or sing the National Anthem every morning. The law required all students to participate unless they declined to do so on the basis of religious or personal belief; even then, though, the law required written notification to the parents of any student who declined to participate. Several plaintiffs challenged the law as unconstitutional: (1) a public high school student asserted that the law violated his First Amendment right to free speech; (2) parents of students in certain private nonreligious schools alleged that the law violated their liberty interest in directing the upbringing and education of their children; and (3) certain private nonreligious schools asserted an infringement of their rights to free speech and free association.

Holding: The federal court for the Eastern District of Pennsylvania found the law unconstitutional.

Student Claims: The student argued that the law compelled or coerced students to recite the pledge or sing the anthem by providing a disincentive to opt out, in the form of the parental notification provision. In *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), the U.S. Supreme Court held that students' First Amendment rights are violated when the state compels them to recite the pledge, salute the flag, or in some other way declare a belief. If the notification provision impinges on a student's right not to speak, it is unconstitutional unless it serves a compelling governmental interest and is narrowly tailored to serve that interest. In this case, the court rejected the state's assertion of a compelling interest: that notification was an effective way to notify parents of the law's administration. The law's legislative history indicates that the purpose of the notification provision was, rather, to punish students who did not recite the pledge or the anthem. In addition, the court found the notification provision unnecessary to promoting the interest asserted. A generalized notice to all parents would serve the same end.

Parent Claims: The parents of children in private nonreligious schools argued that the law infringed on their Fourteenth Amendment liberty and due process rights to choose the method used to educate their children. In choosing the private nonreligious schools that they did, they sought to expose their children to the values of individuality, self-discovery, and self-learning. Mandatory daily recitation of the pledge or the anthem, they claimed, undermined this educational message.

As noted above, the court ruled that—because the law infringes on a fundamental constitutional right—it can only be upheld if it serves a compelling governmental interest and is narrowly tailored to serve it. In this context, the court accepted the state's asserted interest as compelling: that teaching patriotism and civics is an important part of the development of an educated and responsible citizenry. Again, however, the court did not find the law narrowly tailored. State law already allows schools to instill such values by devoting one class period per week to that purpose. That less-restrictive method of teaching patriotism and civics is more narrowly tailored to serve the state's interest.

School Claims: The school plaintiffs argued that the law impaired their ability to express those views, and only those views, that they intended to express. In *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), the U.S. Supreme Court held that a New Jersey law requiring the Boy Scouts to accept homosexual members would compel the Boy Scouts to express the view that homosexuality is acceptable, which is contrary to the Boy Scouts' philosophy. The law thus violated that organization's right to freedom of expressive association.

It is clear that the school plaintiffs in this case, who seek to instill values in children through instruction and activities, are also an association engaging in expressive activity. These schools advocate the value of independent thought and free speech among their students. They argue that the law requires them to affirm the state's view on patriotism in a manner prescribed by the state, thus eliminating the ability of their students to make without coercion their own choices about what (if anything) they wish to recite. The court agreed with this argument and, because the law was not narrowly tailored, found it unconstitutional. ■