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School Matters

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I. INTRODUCTION

To survive and prosper, every democratic government needs a strong education system. The government must create an educated citizenry who through the voting process helps the government not only make good decisions but criticize its bad decisions. To do so requires a free exchange of ideas. The United States government depends on schools to teach literacy, encourage socialization, convey societal values, explain the nature and rules of the political system and its laws, and instill a sense of patriotism. Achieving most of these goals requires teaching the nation's history, which in today's divided world is often a complicated endeavor.

Justice Breyer recognized this critical role of education in *Mahanoy Area School District v. B.L.*,[1] in which he stated that:

> America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the "marketplace of ideas." This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection.[2]

Many controversies and problems in the education arena involve constitutional law issues. Most recently, major constitutional issues like those involving speech, religion, racial discrimination, and sex discrimination, have arisen in the education context. In all of these areas except sex discrimination, the Supreme Court has issued at least one major decision in the last several years directly involving education.

Although there have not been recent Supreme Court decisions directly involving sex discrimination in education, a significant number of lower courts have ruled and will likely continue to rule on the issue. These cases typically involve constitutional (equal protection and due process), statutory (usually Title IX of the Education Amendments of 1972), or administrative provisions addressing what many consider to be socially and politically divisive topics.

All of the Supreme Court's most recent decisions directly involving

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1. 141 S. Ct. 2038, 2046 (2021).

2. *Id.*; *see also* Keyishian v. Bd. of Regents, 385 U.S. 589, 602–03 (1967) ("Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.") (collecting Supreme Court cases).

education have been decided on constitutional grounds. In some of these decisions, the Court has utilized new jurisprudential approaches or doctrinal changes to resolve important legal issues.[3]

To illustrate some of today's most challenging issues in the educational arena, it may be helpful to provide a brief summary of the nature and scope of these recent Supreme Court decisions, examples of related issues that are being addressed in the lower courts, and issues occurring outside of the courts.

II. SPEECH

The most recent Supreme Court decisions involving speech in the education context are *Mahanoy Area School District v. B.L.*[4] and *Kennedy v. Bremerton School District*.[5] In *Mahanoy*, the Supreme Court addressed for the first time whether the First Amendment prevents students from being disciplined by a school for online speech made off-campus.[6] The Court held that the First Amendment protected a student's off-campus social media video post of her making a vulgar hand gesture directed toward school personnel.[7] However, the Court declined to hold that all off-campus speech is protected by the First Amendment.[8]

The *Kennedy* decision involved both speech and religion issues. *Kennedy* held that free speech as well as free exercise rights were violated when a public high school disciplined a football coach who said a quiet personal prayer at midfield at the end of a football game.[9] The Court concluded that the prayer was private speech and not the speech of the school.[10]

3. In *Kennedy v Bremerton School District*, both the majority and the dissent acknowledge a new approach is being used in the religion area, one praising the change and one strongly criticizing the change. *See, e.g.*, Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2427 (2022) (using historical test rather than jurisprudential framework previously used for decades for Establishment Clause issues under Lemon v. Kurtzman) (citing Am. Legion v. Am. Humanist Ass'n, 139 S. Ct. 2067, 2079–81 (2019) (plurality opinion)) and *id.* at 2434 (Sotomayor, J., dissenting) (stating that the current Court is "paying almost 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." (citing Carson v. Makin, 142 S. Ct. 1987 (2022) (Breyer, J., dissenting))). *See also* the text *infra* at notes 20 and 21.

4. 141 S. Ct. 2038 (2021).

5. 142 S. Ct. 2407 (2022).

6. 141 S. Ct. at 2042–43.

7. *Id.*

8. *Id.* at 2046.

9. 142 S. Ct. at 2433.

10. *Id.* at 2424.

Free speech and free exercise rights often overlap. Additionally, the Free Exercise Clause and the Establishment Clause are often in tension with each other. *Kennedy* illustrates these constitutional complexities.[11]

The *Kennedy* Court held that there was no Establishment Clause violation that could justify the school's restrictions on the coach's right to engage in his personal prayer after the game.[12] The Court determined that no students were coerced to pray.[13] The Court stated that "[a]n Establishment Clause violation does not automatically follow whenever a public school or other government entity 'fail[s] to censor' private religious speech."[14]

The *Kennedy* Court stated that it had "long ago abandoned *Lemon* [*v. Kurtzman*[15]] and its endorsement test offshoot" as its jurisprudential framework for construing the Establishment Clause.[16] The *Lemon* test determines that a law meets the requirements of the Establishment Clause by deciding if the law: (1) has a legitimate secular purpose; (2) does not have the primary effect of either advancing or inhibiting religion; and (3) does not result in an excessive entanglement of government and religion.[17]

The *Kennedy* Court complained that the *Lemon* test had led to inconsistent results when assessing multiple instances of essentially the same facts.[18] The *Kennedy* decision acknowledged that "[i]n the last two decades, this Court has often criticized or ignored *Lemon* and its endorsement test variation."[19]

The *Kennedy* decision also continued the Court's shift toward a constitutional interpretation based on historical analysis. The Court stated that "[i]n place of *Lemon* and the endorsement test, this Court has

11. *Id.* at 2427.

12. *Id.* at 2416.

13. *Id.* at 2452.

14. *Id.* at 2427 (citing and quoting Bd. of Educ. v. Mergens, 496 U.S. 226, 250 (1990) (plurality opinion)); *id*. at 2427 ("Nor does the Clause 'compel the government to purge from the public sphere' anything an objective observer could reasonably infer endorses or 'partakes of the religious.'" (quoting Van Orden v. Perry, 545 U.S. 677, 699 (2005) (Breyer, J., concurring))); *id*. at 2427–28 ("In fact, just this Term the Court unanimously rejected a city's attempt to censor religious speech based on *Lemon* and the endorsement test." (citing Shurtleff v. City of Boston, 142 S. Ct. 1583, 1587)); *id.* at 1595 (Alito, J., concurring); *id*. at 1588–89 (Gorsuch, J., concurring) (footnote 4 omitted).

15. Lemon v. Kurtzman, 403 U. S. 602 (1971).

16. Kennedy v. Bremerton Sch. Dist., 142 S. Ct. at 2414 (2022) (stating that the "shortcomings" associated with this "ambitiou[s]," abstract, and ahistorical approach to the Establishment Clause [under *Lemon*] became so "apparent" that this Court long ago abandoned *Lemon* and its endorsement test offshoot (citing Am. Legion v. Am. Humanist Ass'n, 139 S. Ct. 2067, 2079–81 (plurality opinion))); *see also* Town of Greece v. Galloway, 572 U.S. 565, 575–77 (2014).

17. Lemon v. Kurtzman, 403 U.S. at 612–13.

18. Kennedy v. Bremerton Sch. Dist., 142 S. Ct. at 2427 (citing and quoting Capitol Square Rev. & Advisory Bd. v. Pinette, 515 U.S. 753, 768–69 n.3 (1995) (plurality opinion) (emphasis removed)).

19. *Id.* at 2428 n.4 (collecting cases).

instructed that the Establishment Clause must be interpreted by "'reference to historical practices and understandings.'" [20]

The Court explained that the "'line' that courts and governments 'must draw between the permissible and the impermissible' has to 'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'"[21]

Using this historical interpretation of the Establishment Clause, the *Kennedy* Court upheld what may be viewed as an expansion of constitutionally permissible prayer by a public school coach. How the existence of our modern religiously pluralistic society, which did not exist at the time of the Founders, will impact the Court's historical analysis and understandings remains to be seen.

There are also many examples of speech issues that are being examined outside of the Supreme Court by legislatures, policy makers, and lower courts. These include book bans in classrooms and in libraries;[22] curriculum bans, particularly regarding subject matter involving gender or race, including critical race theory; prohibiting the availability of information about the LGBTQ+ community; limits on unpopular or offensive speakers; school efforts to eliminate or punish disruptive protests on campus; and exclusionary policies or discriminatory bylaws adopted by recognized student groups on university campuses. Additional examples of speech issues in the education context include faculty objections to mandatory classroom use of student-chosen pronouns;[23] in-class or syllabus trigger warnings; university-issued guidelines regarding free speech on campuses; and a proposed American Bar Association requirement stating that law schools must have a First Amendment policy.[24] The First Amendment questions presented by many of these issues await definitive resolution.

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20. *Id*. at 2428 (citing and quoting Town of Greece v. Galloway, 572 U.S. 565, 576 (2014); *see also* Am. Legion v. Am. Humanist Ass'n**,** 139 S. Ct. at 2087).

21. *Id.* at 2428 (citing and quoting *Town of Greece*, 572 U.S. at 576).

22. *See, e.g.*, Tovia Smith, *School Book Bans Show No Signs of Slowing, New PEN America Report Finds*, NPR (Sept. 21, 2023, 9:26 AM), https://www.npr.org/2023/09/21/1200725104/book-bans-school-pen-america [https://perma.cc/6WBC-C7HB].

23. Arguments made by faculty who oppose the mandatory use of such pronouns are based on compelled speech or academic freedom, as well as religious objections to gender transitions. *See, e.g.*, Meriwether v. Hartop, 992 F.3d 492 (6th Cir. 2021) (upholding professor's right to decline to use student's requested pronoun that reflected student's gender identity based on professor's sincerely held religious beliefs and recognizing an academic exception to the limits placed on public employee speech). At least one other case involves a teacher who has religious objections that are protected by a state constitutional provision.

24. The Council of the ABA Section of Legal Education and Admissions to the Bar proposed new Standard 208 that would require law schools to enact policies that protect academic freedom and that among other things must "(1) [p]rotect the rights of faculty, students, and staff to communicate ideas that may be controversial or unpopular, including through robust debate, demonstrations, or protests; and (2) [p]roscribe disruptive conduct that hinders free expression by preventing or substantially interfering with

III. RELIGION

In addition to *Kennedy v. Bremerton School District*, there have been three other major Supreme Court cases since 2017[25] involving religion and education: *Trinity Lutheran Church of Columbia v. Comer*,[26] *Espinoza v. Montana Department of Revenue*,[27] and most recently, *Carson v. Makin*.[28] All three involve some issue of public funding. All of them indicate that when there is a case dealing with the inherent and inevitable tension between the Free Exercise Clause and the Establishment Clause, the current Supreme Court tilts toward favoring the Free Exercise Clause.

Trinity Lutheran and *Espinoza* involved state no-aid laws that required greater separation of religion and the state than did the federal Constitution. The Court has reasoned that this state requirement for greater separation of church and state is subject to the federal Free Exercise Clause. Funding limitations were struck down in all three cases.

Both *Trinity Lutheran* and *Espinoza* involved questions of whether religiously affiliated schools could be excluded from receiving state benefits that were otherwise available to non-religious schools. The Court held in both cases that such an exclusion constituted discrimination on the basis of the religious character—the status—of the entity seeking the government funding or government benefit in violation of the Free Exercise Clause.

Makin involved the question of whether the state of Maine could require that private schools that received state tuition assistance[29] had to be nonsectarian—that is that they did not teach religion. Only those

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the carrying out of law school functions or approved activities . . . [and] . . . may: (1) [r]estrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, or that unjustifiably invades substantial privacy or confidentiality interests." Memorandum from the Strategic Rev. Comm. to the Council on Standards Revisions for Notice & Comment Related to Acad. Freedom & Freedom of Expression, Learning Outcomes & Assessment, & Libr. & Info. Res. 2–3 (Aug. 17, 2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug23/23-aug-src-memo-standards-revisions-notice-comment.pdf (on file with the American Bar Association).

25. During the COVID-19 pandemic, there were legal challenges to laws or policies that required mandatory vaccinations or masking. Some of these challenges applied to schools. Before the pandemic, it was generally held that mandatory school vaccination laws were constitutional. James M. Beck, *Not Breaking News: Mandatory Vaccination Has Been Constitutional for over a Century*, ABA (Oct. 28, 2021), https://www.americanbar.org/groups/litigation/resources/newsletters/mass-torts/not-breaking-news-mandatory-vaccination-has-been-constitutional-century/ [https://perma.cc/G4DF-Y938]. Some states have permitted religion exemptions.

26. 582 U.S. 449 (2017).

27. 140 S. Ct. 2246 (2020).

28. 142 S. Ct. 1987 (2022).

29. The tuition assistance was on behalf of students from rural and sparsely populated school districts that did not have public secondary schools. *Id.* at 1993.

schools that taught religion were excluded from receiving the tuition assistance. The Court held that the requirement violated the Free Exercise Clause. The Court did not want to make a distinction that was based on use-based discrimination.

Critics of these cases argue that the decisions, particularly *Makin*, may lead to mandatory state funding for religious schools and religious education.[30] Of course it remains to be seen what kind of state regulation may be permissible if such a mandate occurs.

IV. RACIAL DISCRIMINATION

The most notable recent Supreme Court decision involving race in the education context is *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* together with *Students for Fair Admissions, Inc. v. University of North Carolina* in which the Court struck down the constitutionality of race-based affirmative action in college admissions, a major departure from some previous decisions.[31] The Court, in an opinion by Chief Justice Roberts, held that such admissions policies violated the Equal Protection Clause and Title VI of the Civil Rights Act of 1964. The interests the schools asserted as compelling were not measurable. There was also no time limit established for the schools' policies.

In light of this Supreme Court decision, college officials and ultimately lower courts will have to evaluate the constitutionality and efficacy of alternative ways to enhance diversity in their admissions and college environment. Current discussions include possibilities such as eliminating legacy admissions; allowing automatic admission for a certain top percentage of all graduating classes from feeder public high schools; enabling application essays to allow students to tell their personal story in overcoming adversity, including discrimination; and increasing financial assistance and scholarships.[32]

30. *See, e.g.*, Ira C. Lupu & Robert W. Tuttle, *Carson v. Makin and the Dwindling Twilight of the Establishment Clause*, AM. CONST. SOC'Y: EXPERT F. (June 23, 2022), https://www.acslaw.org/expertforum/carson-v-makin-and-the-dwindling-twilight-of-the-establishment-clause/ [https://perma.cc/9FG8-4JWZ].

31. 143 S. Ct. 2141 (2023).

32. The White House and the Department of Education and the Department of Justice have issued a variety of Documents to help explain the Supreme Court decision and help colleges and universities find legal means to maintain diversity at their schools. *See* Elise Colin & Bryan J. Cook, *The Future of College Admissions Without Affirmative Action*, URB. INST.: URB. WIRE (June 23, 2023), https://www.urban.org/urban-wire/future-college-admissions-without-affirmative-action [https://perma.cc/8DH3-4FWF].

V. SEX DISCRIMINATION

As noted above, there have been no recent Supreme Court decisions directly involving sex discrimination in education. However, the Biden administration has issued executive orders on this topic. These orders declare that discrimination on the basis of sex under Title IX as well as other national antidiscrimination laws include discrimination on the basis of sexual orientation or gender identity.[33] Federal administrative action has subsequently been taken by the Department of Justice and the Department of Education supporting this position. This conclusion is based on the adoption of the Supreme Court's reasoning in *Bostock v. Clayton County*, in which the Court interpreted the prohibition against "sex discrimination" under Title VII of the Civil Rights Act of 1964 to encompass discrimination on the basis of sexual orientation or gender identity.[34]

New sexual harassment regulations under Title IX are expected soon from the Department of Education. Older sexual harassment regulations

33. President Biden issued Executive Order 13,988, entitled Preventing and Combating Discrimination on the basis of Gender Identity or Sexual Orientation, on Inauguration Day 2021. Exec. Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 25, 2021). President Biden issued Executive Order 14,021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity, issued on March 8, 2021. Exec. Order. No. 14,021, 86 Fed. Reg. 13803 (Mar. 8, 2021).

Executive Order 13,988 states, among other things, that the reasoning of the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), also applies to other statutes prohibiting sex discrimination, including Title IX of the Education Amendments of 1972, "so long as the laws do not contain sufficient indications to the contrary." Exec. Order No. 13,988, 86 Fed. Reg. at 7023. As noted in the text, *Bostock* held that the prohibition of Title VII of the Civil Rights Act of 1964 against sex discrimination in the workplace must be construed to include discrimination on the basis of sexual orientation or gender identity. *Bostock*, 140 S. Ct. at 1748.

Executive Order 14,021 prohibits discrimination on the basis of sexual orientation or gender identity specifically in the school context and under Title IX. Exec. Order No. 14,021, 86 Fed. Reg. at 13803. Both executive orders require extensive review of all existing regulations, orders, guidances, policies, and agency actions to ensure they are consistent with the Biden administration's policy on sex discrimination.

34. After the issuance of Executive Orders 13,988 and 14,021, the Department of Justice and the Department of Education each issued interpretative documents concluding that the reasoning of the Supreme Court decision in *Bostock*, 140 S. Ct. 1731 (2020), which construes that sex discrimination under Title VII of the Civil Rights Act of 1964 also applies to Title IX of the Education Amendments of 1972. Both agencies found nothing persuasive to justify a different conclusion. Thus, both agencies concluded that sex discrimination under Title IX encompasses discrimination based on sexual orientation and gender identity. Memorandum from Principal Deputy Assistant Att'y Gen. Pamela S. Karlan C.R. Div. on the Application of *Bostock v. Clayton County* to Title IX of the Educ. Amends. of 1972 to the Fed. Agency C.R. Dirs. & Gen. Couns. 2 (Mar. 26, 2021), https://www.justice.gov/crt/page/file/1383026/download. On June 22, 2021, the Department of Education, Office for Civil Rights, issued the same interpretation of Title IX of the Education Amendments of 1972 as the Department of Justice had issued based on the Supreme Court's reasoning in *Bostock.* Enf't of Title IX of the Educ. Amends. of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32637 (June 22, 2021).

currently exist as do regulations regarding sex discrimination in other areas to which Title IX also applies.

Lower courts are currently addressing sex discrimination in several areas in the education context. These include, for example, issues of discrimination in athletics such as scholarship availability and the lack of equality in athletics programs.[35] Lower court cases have also addressed sexual harassment. These decisions have evaluated what constitutes sexual harassment as well as the nature of the process that should be used in disciplinary proceedings involving allegations of sexual misconduct.[36]

Numerous lower court decisions have also analyzed discrimination in multiple areas based on LGBTQ+ status. This type of discrimination may center around the debate of whether school bathroom and locker-room use policies should be determined on the basis of gender identity;[37] the use of student-chosen pronouns;[38] and the role of parents or parental consent in school gender support plans.[39] This may also involve determining whether transgender females may participate in female sports in school athletic programs.[40]

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35. *See e.g.*, A.B. v. Hawaii State Dep't of Educ., 30 F.4th 828 (9th Cir. 2022).

36. Procedural requirements may be constitutional as well as regulatory.

37. *See, e.g.*, Grimm v Gloucester, 972 F.3d 586, 614 (4th Cir. 2020), and *cert. denied*, 141 S. Ct. 2878 (2021) (school policy requiring bathroom use based on biological sex of student violated rights of transgender male student under Title IX and was not substantially related to school's interest in protecting cisgender students' bodily privacy); *but see* Adams v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791 (11th Cir. 2022) (en banc) (finding that the school's bathroom policy prohibiting transgender male student from using boys' bathroom at school did not violate transgender male student's equal protection rights and did not violate Title IX).

38. *See supra* note 23.

39. *See, e.g.*, Mahanoy Area Sch. Dist. v. B.L., 141 S. Ct. 2038, 2053 (2021) ("In our society, parents, not the State, have the primary authority and duty to raise, educate, and form the character of their children.") (Alito, J., concurring); Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist., No. 22-2927, 2023 WL 6330394, at *3 (8th Cir. Sept. 29, 2023) (claim for injunctive relief against school district for its gender support policy that would allow schools not to involve parents was moot on appeal as state had passed a statute that provided the requested relief by stating that the "District may not knowingly give false information to a parent about a student's gender identity, and must notify a parent of a student's request for a gender accommodation from a licensed practitioner"); John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ., 78 F.4th 622, 636 (4th Cir. 2023) (holding that parents in this case did not have Article III standing, but nevertheless acknowledging that "[t]he dissent's fundamental point [that] . . . '[t]he issue of whether and how grade school and high school students choose to pursue gender transition is a family matter, not one to be addressed initially and exclusively by public schools without the knowledge and consent of parents'—may be compelling"); Tatel v. Mt. Lebanon Sch. Dist., No. 22-837, 2023 WL 3740822, at *1, *8 (W.D. Pa. May 31, 2023) (denying defendants' motion to dismiss claims that a first grade teacher's decision to tell her students that the students' "parents may be wrong about the students' genders" likely interfered "with the [p]arents' right to form their young children's identities," and parents plausibly pled equal protection and familial privacy claims under the Fourteenth Amendment, the First Amendment, and substantive and procedural due process).

40. *See, e.g.*, Hecox v. Little 79 F.4th 1009, 1016–17 (9th Cir. 2023) (district court did not err in granting injunction against state categorical ban against transgender females from participating in female athletics and "subjecting all female athletes to an intrusive sex verification process if their gender is disputed by anyone"). There are various decisions, schools, and particular sports that have taken a different

VI. THE PROFESSOR RONNA GREFF SCHNEIDER CONSTITUTIONAL ISSUES IN EDUCATION LAW SPEAKER SERIES

The nature of many current education controversies, particularly those involving constitutional questions, has placed education and education law center stage in our nation's current culture war battles. These issues have deeply divided our nation socially, politically, and judicially.

Education plays an essential role in the lives of the American people, especially because it is one of the few activities that is compulsory from the time we are young and because it is significantly regulated by the State. Therefore, it may not be surprising that the educational issues in our culture war battles receive such focused attention. Moreover, persons on all sides of these controversies often seek relief in the courts. Courts, including the Supreme Court, are currently in the process of what appears to be a jurisprudential shift. This apparent shift sometimes makes the analyses and outcomes of court decisions less predictable.

For these reasons, it can be challenging to understand education law today. It can also be complicated due to the large number of stakeholders in the education process who may have conflicting interests in that process or in its outcomes. These stakeholders include teachers, administrators, students, parents, the State, and the public at large.

Lower courts are often asked to decide issues that are relatively new in the education context or that may be viewed as socially controversial. Lower courts may find this task even more difficult as they make these complex decisions at the same time that the Supreme Court is undergoing jurisprudential changes that in turn necessarily affect the lower courts' decision-making.

Education law and constitutional law have been my primary legal interests for over four decades. While the approach to educating younger students is necessarily different than that involving older, more mature students, our education system should provide all students—at any level—with the opportunity to enhance their own intellectual curiosity, gain access to age-appropriate information and knowledge, and develop the ability to think critically. Regardless of the age of the students, fairness and nondiscrimination should be necessary parts of the education process. The knowledge and skills our society decides are required to preserve our democracy have, and likely will, affect how we view the role of law in protecting individual rights within the educational system.

The Professor Ronna Greff Schneider Lecture series was endowed by my husband, Dr. John Schneider, in honor of my retirement after forty-two years of teaching at the University of Cincinnati College of Law. The

approach to this issue and prohibited transgender females from participating in female athletics. Some states have statutes to address this issue.

lectures will reflect my long-standing interest in the intersection of education law and constitutional law. These lectures will bring national experts to the College of Law who will share their valuable insights and various points of view on critical contemporary issues in education law.

The speakers should enable students, lawyers, educators, school administrators, policy makers, and members of our larger communities to explore these issues, which have a major impact on so many people. These experts will examine the theoretical aspects of the legal issues they are discussing as well as share their thoughts on the practical implications of their analyses for the educational process and society at large. My hope is that by acquiring more knowledge and an increased understanding of various perspectives about these issues from these experts, we will bring greater thoughtfulness and civility to our own discussions of what are frequently very divisive and contentious topics.

It is an honor to have had Dean Erwin Chemerinsky as the inaugural speaker in this new lecture series. His article in this issue is based on his lecture, "The First Amendment in Education." He is one of the country's leading First Amendment scholars and one of the most frequently quoted constitutional law scholars.

He is the current Dean of the University of California, Berkeley, School of Law where he joined the faculty in 2017 as the Jesse H. Choper Distinguished Professor of Law. Before he assumed this position, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law. Before that, he was the Alston and Bird Professor of Law and Political Science at Duke University and was a professor at the University of Southern California Law School. He was the 2022 President of the Association of American Law Schools, the umbrella organization for academic law.

Dean Chemerinsky is a prolific scholar, having written sixteen books including leading casebooks and treaties about constitutional law, federal jurisdiction, and criminal procedure. Dean Chemerinsky is the author of more than 200 law review articles. A contributing writer for the Opinion section of the *Los Angeles Times*, he also writes regular columns for the *American Bar Association Journal* and the *Daily Journal* and is the author of op-eds in newspapers across the country. He frequently argues appellate cases, including in the Supreme Court.

In 2016, Dean Chemerinsky was named a fellow of the American Academy of Arts and Sciences. In 2017, *The National Jurist* named him the most influential person in legal education in the United States. He received his B.S. from Northwestern University and his J.D. from Harvard Law School.

While the challenge of addressing legal issues in education is

substantial, it is worth our effort to successfully use the law to resolve some of today's most difficult issues in education.

I am so very grateful that my husband has honored me by bringing this lecture series to the University of Cincinnati College of Law.