U.S. SUPREME COURT DOCKET CHART
2016 TERM
February 19 – February 25

Amicus cases = yellow highlight
Petitions scheduled for conference – green highlight

MOST RECENT PETITIONS FOR CERT. FILED

CASE/DOCKET NO./LOWER COURT CITATION	**ISSUE**	**DATE FILED**	**COMMENTS**
Silver v. Cheektowaga Cent. Sch. Dist., 16-988, *unpublished* (2d Cir.)	Employment & Labor: (1) To what extent does petitioner, a public school teacher, enjoy the right to freedom of speech protected by the First and Fourteenth Amendments while on school property during the day; (2) Did the school district and its superintendent violate petitioner's right to freedom of speech by adopting a policy of permitting teachers, faculty and administrators to display in their classrooms and offices various personal messages, including non-curricular messages relating to matters of political, social or other concerns, but then denying petitioner the right to display similar message based on the religious viewpoint of her speech	2/6/17	Link to Second Circuit's summary order is a*vailable at* http://www.ca2.uscourts.gov/decisions/isysquery/f554f8ac-13da-4eca-ae97-54505bcff73d/3/doc/16-102_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/f554f8ac-13da-4eca-ae97-54505bcff73d/3/hilite/
Villarreal v. R.J. Reynolds Tobacco Co., 16-971, 839 F.3d 958 (11th Cir.)	Employment & Labor: (1) Does Section 4(a)(2) of the Age Discrimination in Employment Act, 29 U.S.C. § 623(a)(2), permit challenges to hiring criteria that disproportionately disadvantage prospective employees in the protected age group, or does it permit claims only by an employer's existing employees; (2) Should courts defer, under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), or *Auer v. Robbins*, 519 U.S. 452 (1997), to the U.S. Equal Employment Opportunity Commission's regulation interpreting Section 4(a)(2) as permitting challenges to "[a]ny employment practice that adversely affects individuals within the protected age group on the basis of older age," including challenges brought by prospective employees; (3) As a matter of law, must an employment discrimination plaintiff alleging that his EEOC charge-filing deadline was equitably tolled plead that he pursued an investigation into the status of his job application, as the U.S. Court of Appeals for the Eleventh Circuit held, even where the complaint plausibly alleges that a reasonable individual in the plaintiff's position would not have pursued such an investigation and that such an investigation would not have put the plaintiff on notice of a potential claim or generated additional relevant information regarding the potential claim	2/9/17	

DECISIONS

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	HOLDING	DATE OF OPINION
Fry v. Napoleon Cnty. Sch., 15-497, 788 F.3d 622 (6th Cir.)	Special Education & Disabilities: Does the Handicapped Children's Protection Act of 1986, 20 U.S.C. §1415(l), require exhaustion in a suit, brought under the Americans with Disabilities Act and the Rehabilitation Act, that seeks damages—a remedy that is not available under the Individuals with Disabilities Education Act	Court, 8-0, held: the exhaustion of the IDEA's administrative remedies is unnecessary where the gravamen of the plaintiff's lawsuit is something other than the denial of the IDEA's core guarantee of a FAPE.	2/22/17

CASES DISMISSED

CASE/DOCKET NO./LOWER COURT CITATION	**ISSUE**	**DATE**	**COMMENTS**

ARGUED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE GRANTED	DATE ARGUED
Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 15-827, 798 F.3d 1329 (10th Cir.)	Special Education & Disabilities: What is the level of educational benefit that school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. §1444 *et seq*.	9/29/16	1/11/17
McCrory v. Harris, 15-1262, 2016 BL 33870 (N.C. Dist. Ct.)	Equity & Discrimination: (1) Did the court below err in (i) presuming racial predominance from North Carolina's reasonable reliance on this court's holding in *Strickland* that a district created to ensure that African Americans have an equal opportunity to elect their preferred candidate of choice complies with the Voting Rights Act if it contains a numerical majority of African Americans? (ii) applying a standard of review requiring the state to demonstrate its construction of congressional district 1 was "actually necessary" under the VRA instead of simply showing it had "good reasons" to believe the district, as created, was needed to foreclose future vote dilution claims? (iii) relieving plaintiffs of their burden to prove "race rather than politics" predominated with proof of an alternative plan that achieves the legislature's political goals, is comparably consistent with traditional redistricting principles, and brings about greater racial balance than the challenged districts; (2) Regardless of any other error, was the three-judge court's finding of racial gerrymandering violations based on clearly erroneous fact-finding; (3) Did the court below err in failing to dismiss plaintiffs' claims as being barred by claim preclusion or issue preclusion; (4) In the interests of judicial comity and federalism, should the court order full briefing and oral argument to resolve the split between the court below and the North Carolina Supreme Court, which reached the opposite results in a case raising identical claims	6/27/16	12/5/16

REVIEW GRANTED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE GRANTED	DATE OF ORAL ARGUMENT
Gloucester Cnty. Sch. Bd. v. G.G., 16-273, 822 F.3d 709 (4th Cir.)	Legal System: (1) Should this Court retain the *Auer* doctrine despite the objections of multiple Justices who have recently urged that it be reconsidered and overruled; (2) If *Auer* is retained, should deference extend to an unpublished agency letter that, among other things, does not carry the force of law and was adopted in the context of the very dispute in which deference is sought; (3)With or without deference to the agency, should the Department's specific interpretation of Title IX and 34 C.F.R. § 106.33 be given effect	10/28/16	3/28/17 Review limited to questions 2 and 3 presented in petition *Legal Clips* summary of Fourth Circuit panel's decision is *available at* http://legalclips.nsba.org/2016/04/20/fourth-circuit-panel-rules-that-transgender-student-stated-valid-title-ix-sex-discrimination-claim-based-on-gender-identity-after-school-board-barred-him-from-using-boys-restroom-facilities/
Trinity Lutheran Church of Columbia, Inc. v. Pauley, 15-577, 788 F.3d 779 (8th Cir.)	Religion: Does the exclusion of churches from an otherwise neutral and secular aid program violate the free exercise and equal protection clauses of the U.S. Constitution when the state has no valid establishment clause concern	1/15/16	TBA

REVIEW DENIED

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE DENIED	COMMENT
Han v. Emory Univ., 16-873, 658 F. App'x 543 (11th Cir.)	Employment & Labor: (1) Does the Family and Medical Leave Act require an employer to make reasonable accommodations to an ill employee in order to carry out the purposes of the statute; (2) Could a reasonable jury determine that the employer's leave reporting requirement was overly onerous and therefore interfered with the employee's FMLA rights	2/21/17	
Lord v. High Voltage Software, Inc., 16-856, 839 F.3d 556 (7th Cir.)	Employment & Labor: (1) Is the intent of Title VII contravened when employers are permitted to drastically narrow the time frame within which employees must report harassment; (2) Is the protection against retaliation in Title VII eviscerated when a requirement is placed on employees to present evidence of a harasser's motivation in order to proceed with a retaliation claim	2/21/17	
Lopez v. City of Lawrence, 16-770, 823 F.3d 102 (1st Cir.)	Employment & Labor: Is a police promotional process that relies almost exclusively on a candidate's score on a rote-memory, multiple-choice examination and that doesn't test for supervisory skills and abilities necessary for the position and is used to select candidates in rank order of their scores, which results in severe and pervasive disparate impact on minority candidates, valid under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e-2(k)(1)(A)(i)	2/17/17	
Trask v. McDonald, 16-513, 822 F.3d 1179 (11th Cir.)	Employment & Labor: (1) Must a plaintiff disprove her employer's proffered nondiscriminatory reason for a disputed employment action in order to establish a prima facie case of discrimination at summary judgment; (2) Must a plaintiff identify a "nearly identical" comparator in order to establish a prima facie case of discrimination	2/21/17	
Left Field Media LLC v. City of Chicago, 16-384, 822 F.3d 988 (7th Cir.)	Legal System: (1) Is a ban on selling literature on public sidewalks subject to First Amendment scrutiny? (2) Is a regulation that applies to magazines and books but exempts newspapers content-based and/or speaker-based	2/21/17	

PENDING PETITIONS FOR CERTORARI

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Anderson v. E. Conn. Health Network, Inc., 16-945, *unpublished* (2d Cir.)	Employment & Labor: (1) Must a defendant seeking summary judgment establish as a matter of law that its proposed accommodation under Title I and/or its proposed modification under Title III of the Americans with Disabilities Act, 42 U.S.C. §§11201 *et seq.*, is plainly reasonable; (2) Does a proposed reasonable accommodation or modification fail as a matter of law merely because its implementation would have the secondary effect of enabling a disabled physician-employee to avoid having performance matters reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. §§11333	1/26/17	
C.R. v. Eugene Sch. Dist. 4J, 16-940, 835 F.3d 1142 (9th Cir.)	Student Rights & Discipline: (1) Does the First Amendment allow a public school to punish off-campus, non-school-related speech that didn't substantially disrupt school activities or the rights of other student to be secure and to be let alone; (2) Do the U.S. Constitution's due process provisions allow a public school to discipline a 12-year-old boy for speech that is allegedly sexual in nature, where the speech isn't explicitly sexual	1/24/17	*Legal Clips* summary of Ninth Circuit panel's opinion *available at* https://www.nsba.org/legalclips/2016/09/12/ninth-circuit-panel-rules-oregon-district-did-not-violate-students-free-speech
Williams v. Wells Fargo Bank, 16-938, 658 F. Appx 76 (3d Cir.)	Employment & Labor: (1) Was a bank teller's ADEA complaint properly subject to dismissal; (2) Did the U.S. Court of Appeals for the Third Circuit fail to follow binding precedent in *O'Connor v. Consolidated Coin Caterers*, 517 U.S. 308 (1996); (3) Have commentators noted the confusion among the circuits, and is this case the perfect vehicle for clarifying the law in this area	12/19/16	
Teamsters Union Local No. 70 v. NLRB, 16-932, *unpublished* (9th Cir.)	Employment & Labor: (1) Should *NLRB v. Retail Store Employees Union, Local No. 1001*, 447 U.S. 607 (1980), be overruled and its content-based restrictions on peaceful secondary consumer picketing invalidated under the First Amendment; (2) Does Section 8(b)(4)(ii)(B) of the National Labor Relations Act violate the First Amendment as a form of content, viewpoint and speaker discrimination that restricts peaceful expressive conduct based on its message	1/24/17	
City of San Gabriel v. Flores, 16-911, 824 F.3d 890 (9th Cir.)	Employment & Labor: (1) Does the Fair Labor Standards Act, 29 U.S.C. §207(e)(2), allow employers, when calculating the overtime rate, to exclude payments to an employee that are entirely unrelated to "his hours of employment," as other courts of appeals have held in conflict with the U.S. Court of Appeals for the Ninth Circuit; (2) Does the Ninth Circuit's outlier "willfulness" standard, triggered whenever a non-complaint employer "was on notice of its FLSA requirements" but failed to investigate further, contravene this court's decision in *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988)	1/19/17	

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Chung v. El Paso Sch. Dist. #11,16-896, 659 F. App'x. 953 (10th Cir.)	Employment & Labor: (1) Did the U.S. Court of Appeals for the Tenth Circuit deny pro se litigants' First Amendment right of access to the court, the Fifth Amendment right to a jury trial and right to equal protection, and the 14th Amendment right to due process by granting the school district's motion for summary judgment without providing a mandated hearing for a pro se plaintiff to present her material evidence to the federal judge, and to submit proper sworn affidavits 10 days before the motion for summary judgment; (2) Was the Tenth Circuit prejudicial toward unrepresented litigants who were not legally trained to craft a significant pleading in response to the motion for summary judgment; (3) Was the federal judge required to liberally construe pleadings filed by self-represented litigants and apply the judgment of law based on the evidence on record to safeguard pro se litigants' right to be heard in court; (4) Did the Tenth Circuit err in the requirement of a prima facie plus a "but for" causation for the non-movant to survive summary judgment, which was inconsistent with the Supreme Court decision in *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 143 (2000)	11/8/16	
Woldeselassie v. Am. Eagle Airlines, Inc., 16-831, 647 Fed. Appx. 21 (2d Cir.)	Employment & Labor: Did the lower courts err and deny a flight attendant due process when they dismissed her Family and Medical Leave Act claims against the airline for which she worked after twice denying her request for attorney aid	10/24/16	
O'Donnell v. City of Cleveland, 16-821, 838 F.3d 718 (6th Cir.)	Employment & Labor: Do the statutory and constitutional protections against employment discrimination safeguard non-African American police officers who are called upon to use deadly force on African American suspects	12/21/16	
NLRB v. SF Markets LLC, 16-801, *unpublished* (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related clams on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	12/22/16	
Binno v. Am. Bar Ass'n, 16-796, 826 F.3d 338 (6th Cir.)	Special Education & Disabilities: (1) Does a party have constitutional standing to sue under the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., where the defendant enforces a policy essentially requiring applicants to take a specific examination they have reviewed and approved of, that is inherently discriminatory against individuals who are blind, even though a third party develops content for and administers the examination to test takers? (2) Does a party *offer* a discriminatory examination for purposes of the ADA's examinations and courses clause, 42 U.S.C. §12189, when they require that applicants to a program they regulate take a particular examination they have reviewed and endorsed, even though they do not directly prepare the content or administer the examination? (3) Is a party who sues under the ADA's Title V interference provision, 42 U.S.C. §12203(b), alleging that the defendant interfered with his or her right to take a non-discriminatory entrance examination, and apply to an accredited law school free from discriminatory criteria, required to first establish that the defendant violated an earlier title of the ADA	12/19/16	

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Sanders v. 24 Hour Fitness USA, Inc., 16-701, 2016 BL 229211 (5th Cir.)	Employment & Labor: (1) Is a provision in an employment arbitration agreement that prohibits employees from seeking adjudication of any work-related claim on a class, collective, joint, or representative basis in any forum invalid and unenforceable under Sections 2 and 3 of the Norris-LaGuardia Act, 29 U.S.C. §§102, 103, and Sections 7 and 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §§157, 158(a)(1), because it "interfere[s]" with the employees' statutory right "to engage in . . . concerted activities for the purpose of . . . mutual aid or protection"; (2) Is such a provision, if otherwise unlawful, rendered lawful by permitting employees a time-limited pre-dispute opportunity to opt-out of the default employment arbitration agreement	11/22/16	
NLRB v. 24 Hour Fitness USA, Inc., 16-689, 2016 BL 229211 (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in purusit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	11/23/16	
Paso Robles Unified Sch. Dist. v. Timothy O., 16-672, 822 F.3d 1105 (9th Cir.)	Special Education & Disabilities: (1) Did the U.S. Court of Appeals for the Ninth Circuit erroneously determine that the Paso Robles Joint Unified School District procedurally violated the provisions of 20 U.S.C. §1414 by relying in part upon an assessment conducted by a third-party agency during the transition from special education services under the Individuals with Disabilities Education Act parts B & C; (2) Did the Ninth Circuit erroneously determine that a student was denied a free appropriate public education due to a failure to procedurally comply with a provision of 20 U.S.C. §1414 when plaintiff failed to establish a substantive harm; (3) Did the Ninth Circuit's creation of a new paradigm for autism violate the plain language of IDEA	10/31/16	
Magee v. Coca-Cola Refreshments USA, Inc., 16-668, 833 F.3d 530 (5th Cir.)	Special Education & Disabilities: Does Title III of the Americans with Disabilities Act apply only to physical spaces that people can enter	11/11/16	
Schleicher v. Preferred Sols., Inc., 16-571, 831 F.3d 746 (6th Cir.)	Employment & Labor: (1) Under the Equal Pay Act, does a woman have to ask for equal pay to get equal pay, or is the onus on the employer to correct a pay disparity once the employer becomes aware of it; (2) Is an employer required to prove that a pay disparity is justified by a legitimate *business* reason, or will any reason suffice; (3) Does an employer violate the Equal Pay Act by reducing a man's pay to cure a *prima facie* pay violation	10/25/16	
Riley v. Elkhart Cmty. Sch., 16-533, 829 F.3d 886 (7th Cir.)	Employment & Labor: Is proof that a plaintiff was better qualified than the person hired or promoted evidence of pretext only if the differences are so conclusive "that there can be no dispute among reasonable persons of impartial judgment that the plaintiff was clearly better qualified for the position at issue," the avowedly "high evidentiary bar" applied in the U.S. Court of Appeals for the Seventh Circuit	10/17/16	
Scott v. Georgia, 16-523, 788 S.E.2d 468 (Ga.)	Legal System: Is the Georgia statute forbidding otherwise-protected sexually related speech to minors facially invalid under the free speech clause of the First Amendment	10/14/16	

PENDING PETITIONS FOR CERTORARI

CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
Serna v. Transp. Workers Union of Am., 16-484, *unpublished* (5th Cir.)	Employment & Labor: (1) Should *Railway Employees' Department v. Hanson*, 351 U.S. 225 (1956), and implicitly *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), be overruled insofar as they uphold the constitutionality of compulsory union fees; (2) Does requiring that employees affirmatively object to subsidizing constitutionally nonchargeable union speech, rather than requiring affirmative consent, violate the First Amendment	10/11/16	
Lavigne v. Cajun Deep Founds., LLC, 16-464, *unpublished* (5th Cir.)	Employment & Labor: (1) Is a plaintiff required to show that he was replaced by someone outside his or her protected group to establish a prima facie case of discrimination; (2) Where a claimant files a timely Title VII charge asserting that employer conduct was the result of a particular unlawful motive, may a claimant after the end of the charge-filing period amend that charge or bring a civil action, asserting that the conduct was also the result of a second unlawful motive	10/4/16	
Patterson v. Raymours Furniture Co., 16-388, 2016 BL 287695 (2d Cir.)	Employment & Labor: Is a provision in an employment arbitration agreement that prohibits employees from seeking adjudication of any work-related claim on a class, collective, joint or representative basis in any forum invalid and unenforceable under Sections 2 and 3 of the Norris-LaGuardia Act, 29 U.S.C. §§102, 103 and Sections 7 and 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §§157, 158(a)(1), because it "interfere[s]" with the employees' statutory right "to engage in ... concerted activities for the purpose of ... mutual aid or protection"	9/22/16	
NLRB v. Murphy Oil USA, Inc., 16-307, 808 F.3d 1013 (5th Cir.)	Employment & Labor: Are arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum prohibited as an unfair labor practice under 29 U.S.C. §158(a)(1) because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. §157, and are therefore unenforceable under the saving clause of the Federal Arbitration Act, 9 U.S.C. §2	9/9/16	
Ernst & Young LLP v. Morris, 16-300, *unpublished* (9th Cir.)	Employment & Labor: Do the collective-bargaining provisions of the National Labor Relations Act prohibit the enforcement under the Federal Arbitration Act of an agreement requiring an employee to arbitrate claims against an employer on an individual, rather than collective, basis	9/8/16	
Wynn Las Vegas, LLC v. Cesarz, 16-163, 816 F.3d 1080 (9th Cir.)	Employment & Labor: (1) Does the Fair Labor Standards Act impose restrictions, enforceable in private suits, on tip-pooling arrangements by employers who don't seek to count tips toward their minimum wage obligations; (2) Did the U.S. Court of Appeals for the Ninth Circuit err in holding that a federal agency purporting to implement a statute may create entitlements and requirements that the statute doesn't, so long as the statute doesn't expressly prohibit the agency's regulation	8/1/16	
N.M. Ass'n of Nonpublic Sch. v. Moses, 15-1409, 367 P.3d 838 (N.M.)	Religion: Does applying a Blaine Amendment to exclude religious organizations from a state textbook lending program violate the First and Fourteenth Amendments	5/16/16	

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CASE/DOCKET NO./LOWER COURT CITATION	ISSUE	DATE FILED	ADDITIONAL INFORMATION
McLane Co. v. EEOC, 15-1248, 804 F.3d 1051 (9th Cir.)	Employment & Labor: (1) Can a district court's decision to quash or enforce an EEOC subpoena be reviewed de novo, which only the U.S. Court of Appeals for the Ninth Circuit does, or should it be reviewed deferentially, which eight other circuits do, consistent with the U.S. Supreme Court's precedents concerning the choice of standards of review; (2) Does the Ninth Circuit's decision to enforce an EEOC subpoena, depending upon a notion of relevance so broad that it effectively abrogates statutory limits on the EEOC's investigative powers, conflict with *EEOC v. Shell Oil*, 466 U.S. 54 (1984), and the holdings of at least three other circuits	4/4/16	
Colo. State Bd. of Educ. v. Taxpayers for Pub. Educ., 15-558, 351 P.3d 461 (Colo.)	Privatization & School Choice: Does requiring a state to categorically deny otherwise neutral and generally available public aid on the basis of religion violate the U.S. Constitution	10/28/15	*Legal Clips* summary of Colorado Supreme Court decision *available at* http://legalclips.nsba.org/2015/07/06/colorado-supreme-court-strikes-down-districts-private-school-voucher-program-on-state-constitutional-grounds/
Douglas Cnty. Sch. Dist. v. Taxpayers for Pub. Educ., 15-557, 351 P.3d 461 (Colo.)	Privatization & School Choice: Can Colorado's Blaine Amendment, which the unrebutted record plainly demonstrates was born of religious bigotry, be used to force state and local governments to discriminate against religious institutions without violating the religion clauses of the First Amendment and the equal protection clause of the Fourteenth Amendment	10/28/15	*Legal Clips* summary of Colorado Supreme Court decision *available at* http://legalclips.nsba.org/2015/07/06/colorado-supreme-court-strikes-down-districts-private-school-voucher-program-on-state-constitutional-grounds/
Doyle v. Taxpayers for Pub. Educ., 15-556, 351 P.3d 461 (Colo.)	Privatization & School Choice: Does it violate the religious clauses or equal protection clauses of the U.S. Constitution to invalidate a generally-available and religiously-neutral student aid program simply because the program affords students the choice of attending religious schools	10/27/15	*Legal Clips* summary of Colorado Supreme Court decision *available at* http://legalclips.nsba.org/2015/07/06/colorado-supreme-court-strikes-down-districts-private-school-voucher-program-on-state-constitutional-grounds/