

***Regulatory Oversight* Podcast — Solicitors General Insight Series: The Tale of Two Washingtons**

**Host: Stephen Piepgrass**

**Guest Host: Jeff Johnson**

**Guests: District of Columbia Solicitor General Caroline Van Zile and Washington Solicitor General Noah Purcell**

**Aired: July 9, 2025**

**Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast dedicated to delivering expert analysis on the latest developments shaping the regulatory landscape. I'm one of the hosts of the podcast, Stephen Piepgrass, and I lead our firm's Regulatory Investigation Strategy and Enforcement, or RISE practice group.

This podcast highlights insights from members of our practice group, including our nationally ranked state attorney's general practice, as well as guest commentary from industry leaders, regulatory specialists, and government officials. Our team is committed to bringing you valuable perspectives, in-depth analysis, and practical advice from some of the foremost authorities in the regulatory field today.

Before we begin, I encourage all of our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com) to stay current on the latest regulatory developments.

Today, we have the next episode in our special *Regulatory Oversight* Solicitors General Insight series. And this one is very special because it is Washington versus Washington. My colleague, Jeff Johnson is joined by Washington D.C. Solicitor General Caroline Van Zile, and Washington State Solicitor General Noah Purcell to discuss the distinctive structures of their respective offices and where they're focusing their regulatory efforts.

Additionally, they'll delve into the potential opinions and implications of significant legal issues, including the ongoing national debate on parental rights in public education. As you may recall, Jeff is a member of our RISE practice group and is the former deputy solicitor general in the Missouri Attorney General's office. As the Deputy S.G., he advised the state on consumer protection matters and represented Missouri in key federal and state appeals and litigation. Solicitor General Caroline Van Zile has served as Washington D.C.'s Solicitor General since 2022. Caroline previously served as the District's Principal Deputy S.G. and has worked for the office of the Attorney General since 2018.

Before joining the office, Caroline worked on complex and novel legal issues and appellate and trial courts in private practice, and prior to that, she served as a law clerk at the U.S. Supreme Court in the U.S. District Court for the District of Columbia and in the U.S. Court of Appeals for the D.C. Circuit.

Solicitor General Noah Purcell was appointed by Washington State Attorney General Bob Ferguson in 2013 to serve as the state's third Solicitor General. Before his current role, Noah worked in private practice, where he handled litigation and appellate matters, and prior to that, he served in the Department of Homeland Security Office of the General Counsel, advising on security and immigration issues.

Caroline, Noah, and Jeff, I want to thank you all for joining me today. I know we're all very much looking forward to your discussion.

**Jeff Johnson:**

Thank you, Stephen, for the kind introductions. Before we get into any discussion, I'll provide the standard disclaimer that the views and observations expressed by the guests are their own. This series highlights some of the hardest-working and brightest public servants serving in the law today. They are state solicitors general. Caroline and Noah, thank you both for being here. I appreciate it.

**Noah Purcell:**

Of course.

**Caroline Van Zile:**

Happy to be here.

**Jeff Johnson:**

Something that we just found out is that not only do you guys share the fact that one is a solicitor general from Washington D.C. and the other from the state of Washington, you guys are also the third solicitor general for both of your offices. Is that right?

**Noah Purcell:**

That's right. We can fight later about which one is the real Washington.

**Caroline Van Zile:**

The real Washington or the better Washington, which is the more relevant one?

**Noah Purcell:**

Well, that one's not even close, but sorry.

**Caroline Van Zile:**

I agree it's not even close, but I feel like we might have different answers here. It's more juiced for us.



**Noah Purcell:**

Oh man, fair and mild spicy. Okay, okay.

**Jeff Johnson:**

Caroline, just like all federal laws, I just want to say that if I say state, that also includes the District of Columbia for the podcast.

**Caroline Van Zile:**

Of course. Always.

**Jeff Johnson:**

Okay. So, having been the third Solicitor General in each of your offices, you guys represent very different groups of citizens across the country. One's on the East Coast, one's on the West Coast, and some of them can vote for certain things and others can't vote for other things. But I guess the question is, for you Noah, what makes your Solicitor General's Office work and what kinds of things do you generally focus on?

**Noah Purcell:**

Yes, well, we do a fascinating mix of work. Our primary role is assisting with and supervising and handling some ourselves, the appellate work of the office. So, as you probably know, Solicitor General's offices around the country are set up many different ways. Some are tiny, just like one person, others are very large and take over every appeal for the state. We're kind of in the middle. I have nine deputies, solicitors general, and then two fellows, and we help with all the appeals that our office does, but we only directly handle a very small percentage. Even up at the state Supreme Court, we only handle ourselves between a third and a half of the appeals that are happening there. The rest of the time we're helping an attorney in another division of our office prepare for and brief the case.

So, we have a very extensive moot court process. We do very careful review of any briefs. But our model is very much helping line attorneys in other divisions, for the most part, handle their own cases on appeal. As long as they feel ready to do that, we feel they're ready, and sometimes we have to make hard decisions based on the stakes of a particular case or if a case would affect a lot of client agencies, we might be more likely to lead those sorts of cases.

**Jeff Johnson:**

Real quick if I can break in because you said that you guys have an extensive moot court process. Although I expect that we'll have a bunch of appellate law nerds that will listen to this podcast. Can you explain for the more generous attorney who like try cases and things what a moot court is?

**Noah Purcell:**

Sure. Yes. Moot court, just a basically practice argument for an argument. And we typically, for any case in our state Supreme Court, we typically do three moot courts with panelists who we draw from other divisions across the office who don't normally work on the subject matter, that is the subject of the case. So, the idea is that they're just like the judges. They just read the briefs and they come prepared to ask questions, and it's a very, very helpful process.

**Jeff Johnson:**

Sorry to interrupt. I just thought it was something that –

**Noah Purcell:**

No, no, it's fine. I think it's actually a great feature of our office that predated me. That process predated me and I really like it. It means that we're, I would say between 90% and 95% of the questions that we get at a typical oral argument have already come up in the moot courts. Beyond that, in our state, we also have a couple of clients that we'd advise directly from the Solicitor General's Division. That's our governor, our legislature, and our Secretary of State. And then we do something called Attorney General Opinions, which exists, I know in many It's not all where statewide elected officials, legislators, and county prosecutors can ask us questions about unsettled areas of law and we answer them. They're not binding on anyone, but they are often followed, to usually follow.

And then the last big thing we do is Washington State has an initiative process, a referendum process that we've had for a very long time, frequently used. We write the words, the ballot title, the words that actually here on the ballot that would describe what the measure would do if passed. And then we generally litigate questions about initiatives, both the procedure and the substance. So, those are the main things that we do. And as I said before, it's never boring. It's a fascinating range of work.

**Jeff Johnson:**

Carolyn, how about for the District of Columbia? What does the Solicitor General's Office primarily focus on and do from day to day?

**Caroline Van Zile:**

Absolutely. I should say at the outset that anything I say in the context of this podcast is my own opinion or my own view and does not represent the view of the entire office of the attorney general over here, although I think many of them probably share my views on which is the better Washington. But that having been said, in terms of how our office is set up, we're on the larger end of the spectrum. So, we handle all of the appeals on behalf of the district government and its 50 plus administrative agencies. We are very much appellate litigators. And it's an incredibly varied docket because, as you mentioned, we have a unique jurisdictional status.

So, we are essentially operating as a city attorney's office, a county attorney's office, and a state attorney's general's office all packed into one, which means we get a lot of municipal 1983 cases. We have a lot of administrative law cases that goes straight from our agencies under our local Administrative Procedure Act, right up to our Court of Appeals. And it's just a really great sort of 10,000-foot view of all of the law that happens here involving the district government. We have about 20 issue attorneys at any given point in time, depending on how many fellows we have in the office, that includes our supervisors, we have a solicitor general, principal deputy solicitor general, three deputies who are supervisors and then a number of assistant attorneys general who help with that rather large volume of work. We have about 400 appeals pending at any given point in time. So, it's a large shop.

We also do a lot of work helping to advise trial divisions and clients when they have legal issues of first impressions, something that's very novel or high stakes. Our trial divisions and our clients are often good about seeing things that could turn into novel appeals and saying, rather than figuring this all out on the back end, how about we talk to our solicitor general's office and see what they would think if this went up on appeal. So, that's another chunk of work that we handle.

We have a separate legal counsel division that does all of the AG opinions. So, I suppose we're a little bit different in that respect as well. But it is a busy office. We do a lot of work and I'm lucky to have a lot of great people helping to write all of these briefs and handle all the arguments.

**Jeff Johnson:**

I found fascinating, one is that you guys have 400 appeals in a year, because that's a lot. I would have not have expected the district to have had so many, but now that you explain that you're dealing with all the 1983 cases and basically any sort of appellate matter that makes more sense. I guess it is nice to be consulted on the front end of policy decisions rather than having to sort of litigate and clean it up on the back end, right, Caroline?

**Caroline Van Zile:**

Sometimes it works that way. That's the ideal, right? That's the ideal. But all of that is a little sensitive to judgments, it can be a little ad hoc. But I think we have a really nice culture here now. I've been with the office for almost seven years now, and it's a big office, but not so big that folks don't know each other and aren't pretty good about communicating and norming when there are big issues, whether in terms of dollar value or policy, that we want to make sure that everyone is on the same page on. So yes, I'd way rather have a hard question come at me from a trial division than to see it for the first time on appeal.

**Jeff Johnson:**

And then Noah, I do want to draw out, I know this isn't actually a difference between your solicitor general shop and others, but between your attorney general's office and the way it's sort of structured versus others, am I correct that the Washington Attorney General often serves basically as general counsel for each independent agency so that like attorneys are seconded to various agencies?

**Noah Purcell:**

Well, unlike a lot of states, Washington has a law that essentially says that state agencies can only get their legal advice from the Attorney General's office. So, agencies do not have internal legal counsel, or at least they're not supposed to. So, we do all of the legal advice for all the statewide elected officials, for all the state agencies. Sometimes we need specialized expertise that we just don't have, and we have to appoint a private attorney for a particular client, or there's a conflict of interest or something, and so we have to appoint outside counsel. But in general, we do all the legal work for all of the state agencies and elected officials.

**Jeff Johnson:**

So, how large is the entire Washington Attorney General's office then if you're serving as general counsel for everyone as well?

**Noah Purcell:**

It's about 800 attorneys and a similar number of professional staff, so it's a biggest law firm in the state by a fair bit.

**Jeff Johnson:**

Excellent. So, Carolyn, like other solicitor generals, you've got various buckets of responsibilities and day-to-day work, but what's the best part of your job?

**Caroline Van Zile:**

I would say there are two things about my jobs that I really love. One is the hyper-local nature of some of our work. I mean, I know it might not sound super glamorous, but we have a lot of zoning cases, I can recall some cases that we handled where we were trying to build small homeless shelters in the city or parks, or folks were seeking to bring a grocery store to an area that maybe was under resourced in the district, and being able to see things like that to walk by the actual site that was at the center of some of our cases, and know that I've done something in my career to help my neighbors. That's really special and speaks to that variety of cases that is so great in terms of what attorneys general offices handle.

But then the second thing is the people in my office. I know it might sound a little maybe Pollyanna-ish, but we have a really great team here and getting to work with the brilliant attorneys who bring a lot of different talents and backgrounds and personalities to our work. It's just a really lovely place to walk in the door every day and to be able to work with such a high-caliber team is a real pleasure.

**Jeff Johnson:**

Excellent. And Noah, what about you?

**Noah Purcell:**

Similar. The people are definitely the best part I get to work with, just extraordinary people who are really committed to doing good work on behalf of the public. I think the variety of the work is really wonderful. There's not many legal jobs where you can work on an interesting environmental issue one day and the tax issue the next day and a constitutional issue the day after that. That's one of the things I love about this role. And then I just say kind of like the public impact of the work that, yes, you can very quickly see the impact of your work on important policies at the state and national level, which is really rewarding and not super common, I think, in legal practice.

**Jeff Johnson:**

Speaking of seeing your work have policy impact fairly quickly, as well as the large variety. What are some of the current events that are going on in the Washington Attorney General's office these days?

**Noah Purcell:**

Current events, we have a lot of litigation against the Trump administration. I think we're on our 16<sup>th</sup> lawsuit. Many of those have proceeded very quickly very quickly, enter at various stages. I was just at the Supreme Court on Thursday to hear the arguments of the birthright citizenship case that we led one of the cases on. We also have a wide range of other work that happens all the time at more of a state level. As it's happening all over the country, there's a lot of challenges right now to our firearms laws under the recent Supreme Court opinions, kind of altering the approach to how we analyze those laws. And so, we've been defending a wide range of longstanding state laws, as well as some newly enacted state laws against constitutional challenges. I would say those are the kind of common themes, then there's just a ton of other regular work or consumer protection cases, antitrust cases, and then of course the defensive cases where we're defending the state against litigation.

So, plenty to keep us busy, but the things that stand out right now are the federal litigation and the litigation challenging Washington's firearm laws.

**Jeff Johnson:**

Speaking of Washington's firearms laws, I mean, Caroline, your district is famous for starting in this new wave of Second Amendment jurisprudence. I guess Chicago can bear some of the blame as well. But what kinds of current events are going on for the D.C. Attorney General?

**Caroline Van Zile:**

Yes, I suppose nothing really changes in that we, too, in the wake of a case called Bruin, where the Supreme Court really gave some new guidance on how you analyze second amendment cases and required in certain instances historical inquiry, looking for historical analogs that kind of either mirror or don't mirror modern day regulations. We too have seen a surge in challenges to many of our long-standing regulations of firearms. The next case that I am going to argue is a



case challenging our restrictions on firearms possession and carriage for 18 to 20-year-olds. So, starting to get in the mindset for that.

Earlier this year, I argued a case that challenged almost all of our firearms regulations from our registration requirements to our licensing requirement to our regulation of large capacity magazines. So, that has been very active and I've really been spending a lot of time hitting the history books for those cases. Other than that, it's very similar to the docket that Noah's handling. We have a number of interesting antitrust cases out there, some under our local antitrust law, which we're just starting to develop. So, that's been a really exciting project to try and talk to our court for the first time or local D.C. Court of Appeals about antitrust principles and how they should apply here in the district.

We have a case right now where we're working on a brief in opposition in an antitrust case where we were litigating at the trial level and in the Court of Appeals alongside the Department of Justice. So, always find in those cases when you get to work with multiple jurisdictions and sometimes you can be litigating alongside the federal government. And we also have a lot of consumer protection work that we've been doing here, both through legislation and through litigation, developing the contours of our consumer protection law or laws regarding unfair trade practices and deceptive acts. So, those are always really fun to work on because, again, you can see the impact that it has on consumers and folks who are going about making buying decisions in their everyday lives.

**Jeff Johnson:**

Yes, so I have two follow-up questions for you on this. One is in the context of sort of defining the contours of consumer protection law, either certain other industries or areas that are getting more attention than others. And then my other question is a little more nerdy, but I just don't know the answer to this question. In other Courts of Appeals, there's often that allow the Court of Appeals to certify questions to the state's Supreme Court. And I was wondering, have there been any certifications like that from the federal D.C. Circuit to the District of Columbia Court of Appeals?

**Caroline Van Zile:**

Yes, that does happen. It isn't terribly frequent. Usually, they're comfortable just guessing what our law might require. We did get a certification like that. The most recent one that I can think of was actually in a case called *Trump v. Carroll*, the E. Jean Carroll case, where there was a strange certification of a question about the scope of employment. I think the last certification, I can recall before that, that impacted our office in any way was before my time. So, it doesn't happen terribly frequently, but it's fun when it does, and the D.C. Court of Appeals takes it very seriously, and usually gives us an opportunity to weigh in about what the district thinks district law means. So, it's unusual, but it's fun when it happens.

What we get more frequently are Rule 44 notices where private litigants are debating the meaning of say our consumer protection law or alleging that the law is constitutional, and then sometimes the court will come in and ask us to weigh in on that. In terms of trends in consumer protection law, where we're seeing it used, it's really everywhere. I mean, you see oftentimes a lot of cases in the news involving the tech companies because that really is cutting edge and

there are a lot of innovative questions there about when, for example, social media companies count as merchants or not for purposes of these consumer protection laws.

But we also see our consumer protection statute use a fair amount in housing cases, or maybe just statements were made in the context of rental or sales agreement in cases involving one where I argued as an amicus involved the ability of plastic bottles and whether or not that was being correctly represented, whether the relevant company was misconstruing its business practices and whether that affected consumers. So, basically anything that you can imagine that could be sold or rented, our consumer protection law, if you're not, being 100% honest could have something to say about it.

**Jeff Johnson:**

Any product, even if it's a service, right?

**Caroline Van Zile:**

It's a very broad statute. So yes, services as well. Yes.

**Jeff Johnson:**

Thanks so much for giving us those updates for your offices. We invited you guys on to sort of give a solicitor general sort of perspective of things that are happy in the law, and you think might have implications or either your office or your state's, or the states in general at the U.S. Supreme Court, and we selected two issuing cases that involve public education, the religious clauses of the First Amendment that contrast in, I guess, historical traditional ways in that the U.S. Supreme Court is often recognized that there's tension or play in the joints between the establishment clause and the free exercise clause.

In the first case, there are questions about whether the school district's curriculum burdens the religious exercise of children and their parents. And the second, it's whether the state-funded charter schools can be sort of religious in nature or whether or not their religious code or teachings are somehow state action that would then violate the establishment clause. So, we're going to be talking a little bit about *Mahmoud v. Taylor* and *Oklahoma Statewide Charter v. Drummond*. And in the first case, which is *Mahmoud*, the question is essentially, do public school burden parents religious exercise when they compel elementary school children to participate in instruction on gender sexuality against their parents' religious convictions and without notice or opportunity to opt out?

Here we have plaintiffs that are Muslim, Roman Catholic, Orthodox, Catholic parents and they claim that certain curriculum relating to these subjects that are outside of the state sex and reproductive education course are contrary to their faith then interferes with their free exercise of their children's rights. Specifically, in Montgomery County public schools in Maryland repealed I think a long-standing policy that allowed parents to after notice, opt out, of certain curriculum so they could remove their children from instruction that they believed was contrary to their faith.

This case arises not out of a judgment where it's been fully litigated, but it arises out of the denial of a preliminary injunction from the Fourth Circuit. I know that you guys sort of joined the amicus brief that was filed by Maryland in this case. But I guess, Noah, do you have any top-level thoughts on the case and possibly where it might be going and what you think the larger implications of the case might be?

**Noah Purcell:**

It's hard to hazard, I guess, about where the court will go. I think they seem skeptical of the district's approach. But I think it's very hard to come up with a coherent theory of when opt-outs are required to be allowed and when they're not that doesn't radically change how we've approached public education's country for a long time in the sense that teachers, even individual teachers within a building have a lot of discretion in what they decide to focus on in a book or in a textbook. And that is hard to regulate at any sort of granular level about what parents get noticed about and what they don't.

I think the issue of "parents' rights" has been very much a growing issue, especially since COVID when a lot of parents saw a lot more about what was happening in school because they were sitting next to their kids online and some parents didn't like what they saw. And I don't want to hazard a broad guess about where the court's going to go. I do think that we certainly are dealing with similar topics in Washington of what parents can and can't opt their children out of. And I can just say from experience that it creates a lot of procedural and legal complications to try to figure out exactly when and how that is required to be done. That doesn't – well, in a across-the-board way, and I think the court clearly was struggling with that in the argument in terms of when would you actually need to do this and how would the district implement that?

**Jeff Johnson:**

Yes, I mean, I think Justice Sotomayor several times mentions this, I think Justice Jackson also did a good job sort of like pulling a little bit on the tension of like the difference between whether or not it's the school teaching children how to socialize or whether or not it's their peers just asking questions and how broad the injunction might be that the petitioners were asking for. I think maybe one of the larger takeaways might be how state and local governments handle sort of opt-outs just in general. Because I think, and Caroline correct me if you think I'm wrong about this, I think one of the things that's particularly thorny about this case is that they are essentially changing their opt-out policy after so many years based on, I guess, changed conditions or sort of infeasibility. Do you want to talk about that a little bit?

**Caroline Van Zile:**

Yes, my understanding is that part of what sparked this controversy is that there was a period of time when the school district did allow for opt-outs and then for reasons that seemed a little fuzzy in the record, maybe dealing with administrability, they stopped allowing opt-outs for students who wanted to leave when certain or whose parents wanted them to leave when certain books with LGBTQ characters or issues were read or used in English class. And yes, I mean, what the fourth circuit did below was mostly to say, "Well, gosh, we don't really have much of a record on this to know what teachers have been saying, how these books have been

used.” It’s just unclear what exactly the nature of the burden being alleged is here, so let the record develop, and then this case will come back on the merits at some point.

You could see the justices struggling with that in oral argument as well. But I think the optics of there having been an opt-out program in this space and then ending. I mean, reading between the lines, I don’t know, but it seems very possible that having that sort of privilege taken away from them had a real impact on parents caused some real concern in conjunction with this, some new additions to the curriculum and to the books that were expected to be read in class. So, it is very messy and I think it is an example of how it can be tough to tackle these big questions in cases coming in, in such a preliminary posture because one wonders if a more developed record would make a difference one way or the other here, either in terms of being able to see a very concrete burden play out or in terms of appreciating a bit more why it was so difficult for the school district to continue this program in this context while allowing opt-outs, for example, for certain parts of the health curriculum.

**Jeff Johnson:**

The opt-out issue is one that might actually extend beyond the sort of the confines of this particular case, right? Opt-outs are common, whether they’re called waivers or other things. I guess state government’s treatment of defining what exceptions or what opt-outs they’re going to allow sometimes gets them in more trouble than not. Right, Noah?

**Noah Purcell:**

I think that’s true. I mean, you see this issue come up in all sorts of different contexts in state and local government of what medical or testing requirements can people opt out of and what do they need to do to obtain an exemption? Yes, what presentations can employees opt out of? What sort of trainings can employees opt out of? So, it certainly is, you will have implications, I think, beyond the school context.

**Jeff Johnson:**

We’re sort of switching that and contrasting that a little bit with the other case, the Oklahoma case. The Oklahoma case the questions there are whether the academic and pedagogical choices of privately-run schools constitute state action and whether excluding privately run religious schools from the state Charles program of sort of violates their religious freedoms and this sort of arises out of the state of Oklahoma and I think what in the past eight years or so, we’ve had this trilogy of when state funding can go to various religious organizations to serve public purposes. I think we had from Missouri, it was the Trinity Lutheran case, which is about people or a church not being able to purchase leftover tires, stuff for their playground, which the court famously put in the footnote, “Oh, this only applies to when they’re trying to receive pay for services that the state would provide to anyone.” Right? And then here we go to, is it *Espinoza v. Montana*, or maybe it’s vice versa.

And then lastly, I think it was last year, the year before we have *Carson v. Makin*, which is about the state of Maine’s program of paying for their students in generally rural areas to sort of go to other school districts or a use that for religious education. Noah, do you have any top line

thoughts on the core of this issue of like, whether or not a religious charter school that's considered a public school for certain purposes has state action issues?

**Noah Purcell:**

I just think that this case has a lot of interesting ramifications beyond the religious questions, and I think that will play out in very different ways in different states depending on their state constitutions. Washington State has a limited charter school program, but it's very dependent on the idea that charter schools are public schools. That is the basis for them receiving state funding. That is the reason why they comply with the state constitution. And various requirements come with that. And so, if the court here holds that charter schools aren't really public schools, that will play out in very strange and untraceable ways, I think, around the country. So, that's the main thing, honestly, that I'm watching here is just, what exactly do they say about that? How much does it turn on Oklahoma law and how much will it impact these systems in other states?

**Jeff Johnson:**

Yes. I mean, Missouri has the same sort of thing where, well, they recently expanded who can have charter schools, but their charter schools are all considered public schools because it's all tied up into the various funding mechanisms where people's property taxes go to the state board and then get basically sent back to the jurisdictions to fund their public education. I think you're right that it's going to depend on how people have set up their state charter schools and what their state constitutions in many cases say, because many of the state constitutions include public rights to public education throughout the state.

I guess for you, Caroline, what kinds of effects do you see this case potentially having on your citizens?

**Caroline Van Zile:**

Well, the district relies a fair amount on charter schools. We really embraced the charter movement here. And I think Noah is exactly right. You could see this opinion being written in a number of different ways, depending on which route the court takes, particularly on the state action doctrine or whether charters or governmental entities, the impact could really vary. One thing that was brought up in the briefs that I worry about a bit is whether the individuals with Disabilities Education Act would still apply to these schools if they're not governmental entities or engaging in state action because part of my practice involves defensive litigation and what we call IDEA cases. And sometimes we are doing that alongside a charter school.

There's been a lot of debate in public policy about sort of charter schools and their role in our education system, whether they're a foil for public schools, whether they have the same sort of obligations to serve a diverse student population. The IDEA applying to them is part and parcel of that, making sure the students with disabilities are able to have the same choices available to them as students in non-charter public schools.

So, we'll see what happens. But the state of Oklahoma in its brief raised a lot of pretty serious potential follow-on issues, including issues with whether or not portions of federal laws supporting charter schools would now be unconstitutional under the petitioner's theory if the court takes a certain approach. So, I think the provision that Oklahoma was defending is very common among state charter school programs. I think that respondents said in their brief that there were well over 40 states and territories that have a very similar system and it would be such a potentially massive shift if the court were to say, "You can't require these programs to be secular or to deliver a secular education." Sitting here it's very difficult for me to opine on all of the potential ramifications of that pretty major change.

**Jeff Johnson:**

Right. I mean to the extent that charter schools are considered public schools, both for federal funding purposes, that maybe the State Board of Education gets, as well as your right for the non-discrimination and the IDEA laws, how those apply. I think it's interesting that cases, I think *Montana v. Espinoza* and *Trinity Lutheran* and some of the other sort of religious clause cases come up off these Blaine Amendments that were very popular. And of course, that passed across much of state governments in the past for sort of anti-Catholic rhetoric. And I think we're seeing these neutrally phrased textual clauses being used in different ways than I think they may be intended.

Here's the real question for both of you. As court watchers, are we going to have these nice clean majorities with like one majority opinion and a dissenting opinion? Or are we going to have lots of concurring views because these cases raise so many different issues generally. For the first one, the preliminary injunctions that people are going to have questions about the record that they don't think are satisfied. And for the Oklahoma case, they're going to have similar issues as to what they've written in the past.

So, Caroline, the easy question for you, are we going to have opinions for less than 80 pages long?

**Caroline Van Zile:**

Oh, I wouldn't bet on it. I wouldn't bet on it. I will say, look, I know that there are different views out there about the concurring opinions. I personally tend to find them pretty helpful. In the oral argument, in the *Mahmoud* case, for example, the *Charter School* case, too, there was a lot of talk about, well, what about the next case? Can parents also, to a certain extent, dictate the curriculum for all students and not just opt out? How far does this theory go? And when Justice says, want to let us know what they think about the next case, I think that can be really helpful as a litigator.

That said, if you're concurring in the judgment and there's really no majority opinion, those kind of puzzle pieces, those can be more frustrating. But I think these cases, especially the charter school case, we have two different questions presented. What about state action? And then one that goes more to the First Amendment, they're just so complicated that it's hard for me to see these being light lists, especially because in the charter school case, Justice Barrett is recused. So, there you could see some weirdness with four people going a certain direction, one person



having a different viewpoint. I guess we'll know by the beginning of July what the answer to that question is, but I don't have high hopes for clear, clean, crisp rules in either case.

**Jeff Johnson:**

So, Caroline, for you, you think unlikely we're going to get to five easily in the Oklahoma case.

**Caroline Van Zile:**

We'll see. We'll see. There could be five votes for a single rule there. I just don't know. I mean, it is a little bit harder when you're working with the number eight rather than the number nine.

**Jeff Johnson:**

Noah, do you have any thoughts or prognostications on that we're going to get clear rules out of either of these or more sentiments that we're sort of feeling the wind?

**Noah Purcell:**

I'm not much more confident than Caroline about how likely that is. I think there's more and more splintered opinions, it seems like, and that's becoming increasingly common. And I think possibly inevitable here, given just disputes about even what these programs actually are and how they operate in the facts and how they might be described differently by different justices. So, I'm not going to hold my breath for clear guidance. Let's put it that way.

**Jeff Johnson:**

Excellent. Well, with that hopeful note, I think we'll conclude. Thank you, Noah. Thank you, Caroline, so much for taking the time. Thank you for your work for your states and the district, and I hope we can see each other again soon.

**Stephen Piepgrass:**

Caroline, Noah, and Jeff, I want to thank you again for joining me today. This has been an interesting conversation, and I hope all our listeners enjoyed it as well. And thank you to our listeners for tuning in. Remember to subscribe to our [RegulatoryOversight.com](https://www.regulatoryoversight.com) blog and subscribe to this podcast on whatever platform you choose. We look forward to having you join us again next time.

Copyright, Troutman Pepper Locke LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper Locke. If you have any questions, please contact us at [troutman.com](https://www.troutman.com).