September 2025

BARBEAT

Genesee County Bar Association

Elias Fanous, 2025-2026 GCBA President

From the President

Letter from the Editor

Annual Meeting and Election of Officers

Board Profiles

Awards Night 2025

Even Alien Enemies are Entitled to Due Process

Restorative Justice and Community Mediation Join Forces to Promote Healing and Accountability in Genesee County

SCOTUS 2024-25 Criminal Law Update

Supreme Court Update: Transgender and Reproductive Rights

Supreme Court Ruling in *Trump v. CASA, Inc.* on Universal Injunctions

GCBA Past President's Luncheon

What I've Learned

47th Annual Golf Outing

Targeted Threats: Protecting Against Spear Phishing in the Legal Environment

Genesee County Bar Association
315 E. Court St., Flint, Michigan 48502-1611
(810) 232-6012
For editorial information, call (810) 232-6000.

Published quarterly by the State Bar of Michigan, 306 Townsend St., Lansing, MI 48933, for the Genesee County Bar Association. For advertising, call (517) 346-6315.

Table of Contents

4	**From the President**	by Elias J. Fanous
5	**Letter from the Editor**	by Julie A. Winkfield
5	**Annual Meeting and Election of Officers**	
7	**Board Profiles**	
9	**Awards Night 2025**	
10	**Even Alien Enemies are Entitled to Due Process**	by Michael A. Tesner
11	**Restorative Justice and Community Mediation Join Forces to Promote Healing and Accountability in Genesee County**	by Melissa Brothers with Dayna Harper
12	**SCOTUS 2024-25 Criminal Law Update**	by Michael A. Tesner
14	**Supreme Court Update: Transgender and Reproductive Rights**	by Shelley R. Spivack
17	**Supreme Court Ruling in *Trump v. CASA, Inc.* on Universal Injunctions**	by Julie A. Winkfield
18	**GCBA Past President's Luncheon**	
19	**What I've Learned**	By George Hamo
20	**47th Annual Golf Outing**	
21	**Targeted Threats: Protecting Against Spear Phishing in the Legal Environment**	by LindaLee Massoud with Gemini AI

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From the President

By Elias J. Fanous, President

Elias J. Fanous

It is a true privilege to address the remarkable membership of the Genesee County Bar Association as your President. When I began my legal career in 2012, I could not have imagined just how exceptional this Bar would prove to be—nor that I would one day have the honor of serving in this role.

Our Association has benefited from a long tradition of strong, dedicated leadership. It is my sincere hope to continue that tradition of excellence. Just as no one practices law alone, I know I cannot lead alone. I look forward to working in partnership with each of you to advance our shared values: service, integrity, professionalism, and an unwavering commitment to the rule of law.

The Genesee County Bar Association is home to a diverse community of attorneys practicing across every area of law. I have long believed that we are the finest Bar Association in the State of Michigan. In the coming year, I hope to deepen our commitment to one another, to our community, and to the administration of justice. Together, we will honor the legacy of those who came before us and continue to serve as a beacon for the legal profession.

Whether you are a seasoned practitioner or a newly admitted attorney, I encourage you to take an active role in shaping the future of our Bar. Attend our monthly membership meetings, join a committee, and, of course, come out and enjoy our social events. Being part of the Bar Association means more than just showing up for meetings—it's about building camaraderie, supporting one another, and forming meaningful connections beyond the courtroom.

The best part of our Bar Association is that while we are fierce advocates for our clients in court, we are equally fierce supporters of one another. Let us work together to ensure that the Genesee County Bar Association remains a model for our profession and a source of pride for our community. With your engagement and support, we will continue making Genesee County a great place to work and live.

Letter from the Editor

By Julie A. Winkfield

Julie A. Winkfield

Greetings Genesee County Bar Association Community. As we prepare to welcome the fall of 2025, this issue of *Bar Beat* invites us to reflect on the many exciting events of the spring and summer months. From our recognition awards to the introduction of new board members, it has been a season full of growth, celebration, and connection.

This edition also features timely and thought-provoking articles. You'll find analyses of recent Supreme Court rulings alongside unique perspectives from both experts in their fields and members of our own Bar. One highlight includes a reflective piece from a member who shares valuable lessons learned over the course of his career.

Bar Beat continues to be a publication shaped by the voices of our community. There are countless ways to contribute—whether through sharing professional insights, offering practical advice, or reflecting on your journey as a legal professional. Each article enriches our collective knowledge and strengthens our connection as a Bar Association.

In that spirit, let us take a moment to look back with appreciation for where we've been, and forward with excitement for all that is to come.

Annual Meeting and Election of Officers

Thank you to everyone who attended the Association's Annual Meeting and Election of Officers held on Monday, May 19, 2025.

Congratulations to elected Officers: President Elias J. Fanous, Vice President Eric J. Mead, Treasurer Richard D. Hetherington, and Secretary Cara Willing. Their terms began July 1, 2025, and expire June 30, 2026.

Congratulations to elected Directors: Eric M. Froats, Steven M. Robb, Ameh Sheikh-Khalil, and Christopher A. Stritmatter. Terms began July 1, 2025, and expire June 30, 2028.

Retired Judge Duncan Beagle listens as Joel I. Kleiner offers remarks honoring Beagle's years of commitment to the GCBA, as Barbara A. Menear looks on.

Incoming President Elias J. Fanous receives the Spoon Award as incoming GCBA President, while outgoing President Angela Wheeler displays her gavel award commemorating her service as outgoing GCBA President.

Heather V. Burnash, Judge Mary A. Hood, and Rachel Harlow receive plaques in appreciation of their service on the GCBA Board of Directors.

Retired Judge Duncan Beagle presents his comments to the members during the Annual Meeting and Election of Officers.

Outgoing President Angela Wheeler delivers her final address, welcoming incoming President Elias J. Fanous.

Incoming President Elias J. Fanous presents his remarks, acknowledging the work of his predecessors and sharing his vision for the future of the GCBA.

Judge Mary Hood and Attorney Rachel Harlow display their plaques recognizing their dedicated service as outgoing members of the GCBA Board of Directors.

Close-up of outgoing President Angela Wheeler proudly holding her plaque, commemorating and appreciating her year of service as GCBA President.

Eric M. Froats

Family: Wife, Jessica Froats; four children, Makenzie, Makenna, Makinley, and Makayla.

Undergraduate school, grad year, and degree: Oakland University, 2010 Bachelor of Science in Business Administration, General Management.

Law School: Thomas M. Cooley Law School, 2015.

Bar Association member since: 2018

Area(s) of practice: Estate Planning, Probate, Probate Litigation, Property, General Civil

GCBA involvement (committees and activities): Probate Committee

Reasons you believe in service to the GCBA: I believe that it is important to serve the GCBA to connect with the bar members and local community and to provide meaningful impact to the bar.

Contact:
Cline, Cline & Griffin
503 S. Saginaw Street; Suite 1000
Flint, MI 48502
810-600-4213
efroats@ccglawyers.com

Steven M. Robb

Undergraduate school, grad year, and degree: Michigan State University, James Madison College, 2015 BA in Political Theory and Constitutional Democracy.

Law school and grad year: Michigan State University College of Law, 2018

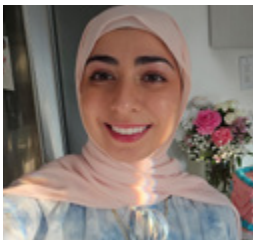
Bar Association member since: 2019

Area(s) of practice: Commercial Litigation, Family Law, Employment Law, Business Transactions, Estate Planning/ Probate, and Real Estate

GCBA involvement (committees and activities): GCBA Board of Directors and GCBA Golf Scramble 2021-2025

Reasons you believe in service to the GCBA: I believe in the GCBA because it provides an opportunity for interaction amongst the local practicing attorneys, more particularly other GCBA members. This gives members the ability to interact with other attorneys in Genesee County to gain further knowledge of the practice of law in the area. It also is an excellent avenue to create trusting relationships with other GCBA members to enhance the local professional experiences. I look forward to serving the GCBA, its members, and our community during my term as a Director.

Contact:
M. Allen Robb, P.C.
3153 W. Hill Rd.
Flint, MI 48507
810-391-2962
steven@marobblaw.com



Amneh Sheikh-Khalil

Undergraduate school, grad year, and degree: University of Michigan-Flint, 2017 English w/ a specialization in Literature.

Law school and grad year: WMU Thomas M. Cooley Law School, 2021.

Bar Association member since: 2023

Area(s) of Practice: Genesee County Prosecutor's Office, Family Division (Abuse and Neglect, and Delinquent cases)

GENESEE COUNTY BAR ASSOCIATION
Professionalism Since 1897

MISSION STATEMENT

The Genesee County Bar Association exists to serve the professional needs of our members, improve the justice system, and educate the public about the law and the role of lawyers.

Reasons you believe in service to the GCBA: I believe in GCBA service because our Association deserves a board that reflects our community. We each bring individual perspectives, ideas, experiences, and knowledge. We are also diverse in knowledge and expertise in our respective legal fields. With that said, I believe my diversity of life and practice can offer a fresh point of view for the Board and GCBA.

Contact:
Genesee County Prosecutor's Office
900 S. Saginaw St.
Flint, MI 48502
(810) 424-4480
asheikhkhalil@geneseecountymi.gov

Chris Stritmatter

Family: Wife, Kathrine Kesten.

Undergraduate school, grad year, and degree: Full Sail University, 2011 Business Administration

Law school and grad year: Thomas M. Cooley Law School, 2016

Bar Association member since: 2016

Area(s) of practice: Municipal law and civil litigation

SBM involvement, if any: Character and Fitness Committee B for a single term of two years.

Reasons you believe in service to the GCBA: I think it is a great community of attorneys. Following in the footsteps of those before me I want to continue to ensure the organization's place. When I first started practicing senior attorneys were an invaluable resource to help maneuver the courts and my cases. I think having a strong bar association and building relationships with attorneys helps resolve cases and save time. The more the attorneys can share knowledge the better it makes the community and adds value to the service our clients receive.

Contact:
Simen, Figura & Parker, P.L.C.
5206 Gateway Centre, Suite 200
Flint, MI 48507
(810) 250-5115
cstritmatter@sfplaw.com

Awards Night 2025

The Genesee County Bar Association and Centennial American Inn of Court held their annual Awards Night on Wednesday, May 28, 2025, at Brickstreet of Grand Blanc.

Thanks to Dayna Harper, Executive Director of the Community Resolution Center for speaking on CRC Specialty Services, including Domestic, Special Education, Agricultural, and Behavioral Health Mediation. She also provided an overview of the Center's Restorative Practices and online mediation portal.

Congratulations to the following award recipients:

- Herbert A. Milliken Jr. Civility Award, Recipient: Barbara C. Dawes
- Roberta J.F. Wray Award for Excellence in Legal Advocacy, Recipient: Janet L. McLaren
- LSEM Pro Bono Attorney of the Year Award, Recipient: Elias J. Fanous
- Jerome O'Rourke Advocacy Award, Recipient: Kyle D. Lawrey

Even Alien Enemies are Entitled to Due Process

By Michael A. Tesner

Michael A. Tesner

Two cases in the United States Supreme Court's 2024-25 term addressed due process challenges to the President's exercise of executive authority under the Alien Enemies Act (AEA), 50 USC §21, to remove Venezuelan nationals who are members of Tren de Aragua, a designated foreign terrorist organization. In ***Trump v JGG*, Docket No. 24A931 (April 7, 2025),** five detainees and a putative class of others similarly situated sought injunctive and declaratory relief against removal under Presidential Proclamation No. 10903, 90 Fed Reg 13033 (2025). The detainees were being held in Texas and facing imminent deportation but filed suit in federal district court in the District of Columbia challenging their removal under the Proclamation. The district court issued two temporary restraining orders (TRO) preventing the removal of the named plaintiffs and the provisionally-certified class of noncitizens subject to the Proclamation. The Government appealed the TROs to the Supreme Court which vacated the district court's orders. The Court first held that challenges to removal under the AEA must be brought in habeas corpus, challenging an individual detainee's confinement and removal. Next the Court determined that venue under habeas corpus was only proper in the jurisdiction of confinement, which was in Texas, not in the District of Columbia. Significantly, however, the Court further held that the detainees are entitled to due process in the form of reasonable notice that they are subject to removal under the Act and an opportunity to seek habeas corpus relief in the proper venue.

In ***AARP v Trump*, Docket No. 24A1007 (May 16, 2025),** two detainees identified as members of Tren de Aragua and being held under the AEA, along with a putative class of similarly situated detainees, sought injunctive and declaratory relief in the Northern District of Texas against summary removal under the Act. The district court denied the detainees' motion for a TRO against summary removal, and hours later putative class members were provided notice of imminent removal, "tonight or tomorrow." The detainees then moved for an emergency TRO by 1:30 p.m. the next day, but when the district court failed to rule on the motion by 3:02 p.m., the detainees appealed the "constructive denial" of the emergency TRO to the Fifth Circuit Court of Appeals. The detainees also applied to the Supreme Court for a temporary injunction. The Fifth Circuit dismissed the appeal for lack of jurisdiction and denied injunctive relief as premature because the detainees had not given the district court sufficient time to rule on the emergency motion for TRO. The Supreme Court construed the detainees' application for injunctive and declaratory relief as a petition for certiorari and granted the petition as well as an application for a temporary injunction.

The Court first held that the Fifth Circuit erred in dismissing the appeal for lack of jurisdiction, as the district court's failure to timely act on the emergency motion had "the practical effect of refusing [the] injunction." Substantively, the Court reiterated its holding in *Trump v JGG* that "the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." With reliance on previous precedent dating back 120 years, the Court continued that "[p]rocedural due process rules are meant to protect" against "the mistaken or unjustified deprivation of life, liberty, or property," and that the Court has long held that "no person shall be" removed from the United States "without opportunity, at some time, to be heard." Quoting from its unanimous decision in *JGG*, the Court stated: "AEA detainees must receive notice . . . that they are subject to removal under the Act . . . within a reasonable time and in such a manner as will allow them to actually seek habeas relief" before removal. That requires a detainee have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief. The Court held that the notice provided to the detainees in the instant case, 24 hours before removal, devoid of information about how to contest that removal, was constitutionally deficient. The Court remanded to the Fifth Circuit to determine the precise procedures necessary to satisfy Fifth Amendment due process.

The Court granted the petition for certiorari and issued a temporary injunction precluding removal, retaining jurisdiction pending a ruling by the Fifth Circuit. The ruling upheld the proceeding through habeas corpus as a class action to determine the due process rights of those detained for removal under the AEA. The Court further granted certiorari regarding what form of notice and opportunity is due such a class, and remanded to the Court of Appeals on that question and whether to grant injunctive relief individually to the named petitioners. In considering injunctive relief, the Court directed the lower court to apply all normal preliminary injunction factors, including the potential success on the merits of opposing removal under the Alien Enemies Act.

Restorative Justice and Community Mediation Join Forces to Promote Healing and Accountability in Genesee County

By Melissa Brothers with Dayna Harper, Ed.D.
Presenters at the GCBA and Centennial American Inn of Court Awards Night 2025

In a powerful collaboration aimed at transforming justice in Genesee County, the Community Resolution Center (CRC) and the Genesee County Prosecutor's Office's Restorative Justice Program have joined forces to offer a holistic approach to conflict resolution and criminal justice reform. Both programs emphasize healing, accountability, and community empowerment over traditional punitive measures.

The Community Resolution Center, a nonprofit organization based in Flint, has been providing free and low-cost mediation services since 1994. Serving Genesee and eight surrounding counties, CRC offers support for disputes involving small claims, landlord-tenant matters, family issues, probate, and more. Through its virtual platform MI-Resolve, CRC makes it easier than ever for residents to access trained mediators and resolve issues outside the courtroom.

Meanwhile, the Restorative Justice Program seeks to address the root causes of criminal behavior by focusing on rehabilitation, education, and community support. Through voluntary mediation sessions, most often hosted in partnership with CRC, victims and justice-impacted individuals engage in honest dialogue to foster mutual understanding and healing.

"This partnership allows us to combine legal innovation with restorative practices to create safer, more connected communities," said Mel Brothers, a representative of the Prosecutor's Office, Restorative Justice and Violence Reduction Strategies Bureau. "We're not just resolving cases—we're repairing relationships."

The benefits of this approach are significant: reduced recidivism, increased accountability, and stronger community ties. Early referrals to the Restorative Justice Program are crucial, as they connect individuals to vital services like mediation resources such as the CRC. Once referred, cases undergo careful review and, when appropriate, are scheduled for mediation through CRC. Depending on the outcome, cases may be resolved and dismissed or returned to the court for further action.

Together, through the leadership of Prosecutor David Leyton and CRC Director Dayna Harper, Ed.D., the CRC and Restorative Justice Program demonstrate how community partnerships can shift the justice system from a punitive model to one centered on healing, responsibility, and resilience.

Referrals to the Restorative Justice Program can be submitted to:

RJReferral@geneseecountymi.gov
More about CRC: www.mediation-crc.org

SCOTUS 2024-25 Criminal Law Update

By Michael A. Tesner

Michael A. Tesner

While in its most recent term the United States Supreme Court decided few criminal cases, the following opinions may be of interest to our local criminal bar.

In ***Glossip v Oklahoma*, No. 22-7466 (February 25, 2025),** Glossip was convicted for aiding and abetting his co-defendant Sneed's murder of Glossip's employer. Sneed pled guilty to avoid the death penalty and testified against Glossip. Sneed's testimony was the only direct evidence connecting Glossip to the murder. Glossip's conviction was affirmed on appeal. Subsequent investigation, however, revealed that the prosecutor had withheld evidence of Sneed's bipolar disorder and failed to correct false testimony by Sneed about his related lithium prescription. Glossip filed a successive petition for post-conviction relief under Oklahoma law, which was supported by the state Attorney General, arguing that failure to correct the false testimony violated the Fourteenth Amendment's Due Process Clause and *Naupe v Illinois*, 360 US 264 (1959). The Oklahoma Court of Criminal Appeals denied the petition, holding that the Attorney General's concession was not based in law or fact because there was no error under *Naupe*.

Upon Glossip's petition for certiorari, the U.S. Supreme Court stayed his execution. The Court held that under *Naupe*, to establish a due process violation, a defendant must show the prosecution knowingly solicited false testimony or allowed false testimony to go uncorrected. If this occurred, a new trial is required if the false testimony could in any reasonable likelihood have affected the jury's judgment and the prosecutor bears the burden to establish harmlessness beyond a reasonable doubt. Based on the record and the Attorney General's confession of error, the Court held that the prosecutor knowingly allowed Sneed to falsely testify and failed to correct the testimony. The error was found to be material as Sneed's credibility was crucial to the prosecution's case. The Court noted that additional prosecutorial misconduct, such as violating the rule of sequestration, destroying evidence, and withholding witness statements, further undermined confidence in the verdict. This violated Glossip's due process rights, and the Court remanded the case for a new trial.

***Andrew v White*, No 23-6573 (January 21, 2025),** was another murder case out of Oklahoma in which the defendant claimed she received a fundamentally unfair trial due to the admission of unfairly prejudicial and irrelevant evidence. Brenda Andrew was convicted along with her boyfriend, an insurance agent, for killing her husband in order to collect on his life insurance policy. Among other things, the prosecutor elicited testimony about Andrew's long past sexual partners, the outfits she wore in public, the underwear she packed for vacation, and how often she had sex in her car. Two witnesses testified solely about her provocative clothing and others were asked to comment on whether a good mother would dress or behave the way Andrew had. The prosecutor emphasized in closing that during her relationship with the victim, Andrew repeatedly kept "a boyfriend on the side," and contrasted her behavior with the victim, whom they claimed was "committed to God." Andrew appealed her conviction both under Oklahoma law and the Due Process Clause and her conviction was affirmed. The Oklahoma Court of Criminal Appeals held that although much of this evidence lacked relevance and only acted to paint her as an immoral person of bad character, its introduction was harmless.

Through a federal habeas corpus claim, Andrew challenged the state courts' application of the Due Process Clause. The federal district court denied relief, and the Tenth Circuit Court of Appeals affirmed, holding that no clearly established federal law recognized Fourteenth Amendment due process as protecting against the introduction of unduly prejudicial evidence at a criminal trial. The U.S. Supreme Court reversed, holding that many of the Court's decisions, dating back to *Payne v Tennessee*, 501 US 808, 825 (1991), had made clear that when "evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." Thus, the Court remanded the case to the Tenth Circuit to determine whether the state courts' application of the law was reasonable, including whether the trial court's mistaken admission of irrelevant evidence was so "unduly prejudicial" as to render Andrew's trial "fundamentally unfair." *Id*. The Court suggested the lower court should consider the relevance of disputed evidence, the degree of prejudice from its introduction, and whether the trial court provided any mitigating instructions to the jury.

In a case of statutory interpretation, the Court in ***Thompson v United States*, No. 23-1095 (March 21, 2025),** examined the text of 18 USC §1014, which prohibits "knowingly mak[ing] any false statement" to influence the FDIC's action on any loan. Following a bank failure, during the FDIC's attempt to collect upon an outstanding loan, the defendant disputed an outstanding balance of $269,120.58 and made repeated statements that he "borrowed . . . $110,000." He was charged under the statute, and the lower courts rejected his defense that his statement was not "false" because he did in fact borrow $110,000, even though he subsequently borrowed more. He was convicted by jury trial and appealed. The Seventh Circuit

Court of Appeals held that §1014 criminalized both *false and misleading* statements and found that the defendant's statements were at least *misleading*. The Supreme Court examined the language of the statute and noted that in other statutes Congress used the phrase "false or misleading," and when it intended to cover misleading statements, "it knew how to do so." The Court reversed and remanded to determine whether a reasonable jury could find the defendant's statements were knowingly "false" and not simply "misleading."

In ***Bondi v Vanderstok*, 23-852 (March 26, 2025),** a number of gun manufacturers and other individuals challenged the regulation of commercially available gun kits under the federal Gun Control Act of 1968 (GCA). The GCA defines "firearm" to include "(A) any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; [and] (B) the frame or receiver of any such weapon." 18 USC §921(a)(3). In 2022, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) adopted a rule to include certain weapons parts kits as "firearms" under the GCA and thus subject to federal regulation. The ATF rule incorporates gun kits that are "designed to or may readily be converted to expel a projectile," 27 CFR §478.11, and "partially complete, disassembled, or nonfunctional" frames or receivers, §478.12(c), within the definition of "firearm" under the GCA. The Supreme Court upheld the ATF rule, holding that it is not facially inconsistent with the GCA. The Court further indicated that "as applied" challenges to the rule would depend on the specific facts regarding the "gun kit" involved and whether the parts are susceptible of ready conversion to a firearm.

Finally, ***Barnes v Felix*, No. 23-1239 (May 15, 2025),** arose out of a traffic stop where Officer Felix ended up using deadly force in self-defense, precipitating a civil rights lawsuit by Barnes's mother under 42 USC §1983 for wrongful death. Barnes initially stopped for Officer Felix, but while Felix was interacting with him through the open car door, Barnes started to drive off. Felix jumped onto the car doorsill and within seconds fired two shots to stop Barnes from driving while Felix hung on. Barnes then stopped the car but later succumbed to his fatal wounds. Under case law developed in the Fifth Circuit Court of Appeals, whether the use of deadly force was justified was evaluated under a "moment-of-threat" rule, focusing on the precise moment that deadly force was utilized. Under that rule, the District Court granted summary judgment to Felix and the Fifth Circuit affirmed. The Supreme Court reversed. The Court reiterated that an excessive force claim requires a determination of whether the force deployed was objectively reasonable from the perspective of a reasonable officer at the scene. The Court held that the Fifth Circuit's "moment-of-threat" inquiry is too narrow and excessive force claims under the Fourth Amendment must focus on the "totality of the circumstances," including events leading up to the use of deadly force. The Court remanded for application of the correct standard.

Supreme Court Update: Transgender and Reproductive Rights

By Shelley R. Spivack

Shelley R. Spivack

Medical decision-making emerged as the vehicle through which the Supreme Court during the 2024-2025 term further limited LGBTQ+ and women's rights. In two cases decided near the end of the term, *U.S. v Skrimetti*[1] and *Medina v Planned Parenthood South Atlantic,* et al,[2] the Court's six member majority issued decisions that will likely have a profound impact not only on the specific issues litigated in each case, but on the fate of a wide variety of issues involving individual rights.

In *Skrimetti* the Court was asked to decide whether a Tennessee law *(SB1)* which prohibits minors from receiving hormones and puberty blockers to treat gender dysphoria[3] violated the Equal Protection Clause. In a 6-3 decision authored by Chief Justice Roberts, the Court used the 'rational basis' test to uphold the law.

As you may remember from your Con law class, when an Equal Protection challenge is raised, the Court can use one of three different levels of review: strict scrutiny, heightened or intermediate scrutiny, or rational basis. The Court has long held that review of legislation concerning 'sex' or 'gender identity' requires 'heightened' scrutiny.[4] While the District Court employed the 'heightened' scrutiny test to enjoin SB1, Justice Roberts found that as the law did not 'turn on sex' only, a rational basis review was required.

You may wonder how a law that prohibits the use of hormones and puberty blockers for the purpose of enabling a "minor to identify with, or live as, a purported identity inconsistent with the minor's biological **sex,** or (2) treating purported discomfort or distress from a discordance between the minor's biological **sex** and asserted identity"[5] (emphasis added) does not turn on sex? Again, think back to your law school days. Remember the 1974 case of *Geduldig v Aiello*?[6] This was the case which infamously held that pregnancy discrimination does not constitute discrimination on the basis of sex. In *Geduldig,* the Court in holding that a disability program that excluded pregnancy was not discriminatory stated: "The program divides potential recipients into two groups—pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes."[7] So, even though only women become pregnant, the classification didn't involve sex. Congress indirectly overruled *Geduldig* by passing the *Pregnancy Discrimination Act in 1978,* and since that time the reasoning behind the decision has lain dormant.[8]

In citing *Geduldig*, Justice Roberts used similar reasoning arguing that the law created two groups: "those who might seek puberty blockers or hormones to treat the excluded diagnoses, and those who might seek puberty blockers or hormones to treat other conditions."[9] He then concluded that just as women were in both groups in *Geduldig*, transgender minors could be found in both groups in the current case. "*Thus, although only transgender individuals seek treatment for gender dysphoria, gender identity disorder, and gender incongruence—just as only biological women can become pregnant—there is a 'lack of identity' between transgender status and the excluded medical diagnoses.*"[10]

Justice Sotomayer in a dissent announced from the bench, vigorously disagreed:

> *What does that mean in practice? Simply that sex determines access to the covered medication. Physicians in Tennessee can prescribe hormones and puberty blockers to help a male child, but not a female child, look more like a boy; and to help a female child, but not a male child, look more like a girl. Put in the statute's own terms, doctors can facilitate consistency between an adolescent's physical appearance and the "normal development" of her sex identified at birth, but they may not use the same*

medications to facilitate "inconsistency" with sex. All this, the State openly admits, in service of "encouraging minors to appreciate their sex." §68–33–101(m).[11]

Justice Sotomayer further relied on the decision in *Bostock v Clayton County*[12] which held that discrimination based on transgender status constitutes sex discrimination:

For one, this Court already decided in Bostock that "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex," 590 U.S. at 660, and sex discrimination is of course subject to heightened scrutiny.[13]

The fear, expressed both by Justice Sotomayer and legal scholars is that the "tortured legal logic"[14] underlying both *Geduldig* and Justice Robert's majority opinion will be used to condone discrimination against women as well as other vulnerable groups.

In Plessy v. Ferguson, for example, the Court insisted that laws that required white and Black individuals to ride in different train cars were not impermissible racial discrimination—the rules applied to and burdened everyone, after all.[15]

Justice Sotoymayer concluded by stating that the majority opinion:

. . . does irrevocable damage to the Equal Protection Clause and invites legislatures to engage in discrimination by hiding blatant sex classifications in plain sight. It also authorizes, without second thought, untold harm to transgender children and the parents and families who love them. Because there is no constitutional justification for that result, I dissent.[16]

In the case of *Medina v Planned Parenthood South Atlantic, et al*[17] the Court confronted the issue of whether individual Medicaid beneficiaries can sue state officials for failing to comply with certain Medicaid funding conditions. In a 6-3 opinion authored by Justice Neil Gorsuch the Court said no.

Planned Parenthood South Atlantic (PPSA) is a health care facility in South Carolina that offers both abortions as well as an array of other gynecological and reproductive health services. Citing a state law prohibiting public funding for abortions, in 2018 South Carolina determined that PPSA would be ineligible to receive Medicaid funding for any of its services.[18] In response, both PPSA and one of their patients filed a complaint under 42 U.S.C. Section 1983 which allows individuals to sue state governments for violating their constitutional or federal statutory rights.

Section *1396a(a)(23)(A) of the Medicaid Act*, referred to as the 'any-qualified-provider provision', specifically states that state Medicaid plans "must (23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Relying on the plain language in the statute, both the District Court and the Fourth Circuit issued summary judgments in favor of the Plaintiffs.

In reversing the lower court decisions, Justice Gorsuch reasoned that as the 'any qualified provider' provision was contained in a spending-power statute it did not create a right that could be enforced through a Section 1983 action. As stated by Justice Gorsuch:

To prove that a statute secures an enforceable right, privilege, or immunity, and does not just provide a benefit or protect an interest, a plaintiff must show that the law in question "clear[ly] and unambiguous[ly]" uses "rights-creating terms.[19]

What are the "rights-creating terms" referenced by Justice Gorsuch? While the opinion does not directly answer this question, Justice Gorsuch compared the language in this portion of the Medicaid statute to the language contained in another Medicaid statute, the Federal Nursing Home Reform Act (FNHRA), which gives nursing home patients "The right to choose a personal attending physician."[20]

Justice Jackson, writing for herself and Justices Kagan and Sotomayer strenuously objected to the majority's narrow reading of Section 1983. In her dissent she refers extensively to the history of the Civil Rights Act of 1871 and Section 1983's "straightforward" language that allows individuals to sue for deprivation of "any rights, privileges or immunities secured by the Constitution or the laws of the U.S."[21]

Analyzing the language in the Medicaid statute, Justice Jackson found that no matter how you look at it, Congress clearly intended the 'any-qualified-provider' provision to give Medicaid recipients the right to freely choose their provider. Citing the heading "Free Choice by Individual" as well as mandatory terms such as 'must', Justice Jackson concluded that "*Congress made a deliberate choice to protect Medicaid recipients' ability to choose their own providers by employing statutory language that it knew, based on its Medicare experience, would achieve that end. Congress's intent could not have been clearer.*"[22]

In closing, Justice Jackson lamented not only the inability of Medicaid recipients to choose their own medical provider, but the 'dulling' of Section 1983:

> *The Court's decision to foreclose Medicaid recipients from using §1983 to enforce that provision thwarts Congress's will twice over: once, in dulling the tool Congress created for enforcing all federal rights, and again in vitiating one of those rights altogether.*
>
> *The Court's decision today is not the first to so weaken the landmark civil rights protections that Congress enacted during the Reconstruction Era. See, e.g., Civil Rights Cases, 109 U. S. 3 (1883); United States v. Cruikshank, 92 U. S. 542 (1876); Blyew v. United States, 13 Wall. 581 (1872). That means we do have a sense of what comes next: as with those past rulings, today's decision is likely to result in tangible harm to real people.*[23]

Endnotes

1 605 U.S. _____ (2025)

2 606 U.S. _____ (2025)

3 The condition in which an individual's sex does not align with their gender identity.

4 *US v Virginia,* 518 U.S. 515 (1996)

5 *Tennessee SB 001*

6 *Geduldig v. Aiello*, 417 U.S. 484 (1974)

7 *Geduldig v Aiello*, fn 20

8 The exception was an extraneous statement by Justice Alito in *Dobbs v Jackson* citing *Geduldig* to state that outlawing abortion did not constitute sex discrimination. However, as the Equal Protection Clause was not an issue in the case, it remains dicta.

9 Slip op at 17

10 Slip op at 17-18

11 Slip op dissent at 11

12 590 U.S. 644 (2020)

13 Slip op dissent at 24

14 Leah Litman, June 24, 2025, *The Archaic Sex-Discrimination Case the Supreme Court Is Reviving*, The Atlantic Monthly, https://www.theatlantic.com/ideas/archive/2025/06/supreme-court-sex-discrimination-skrmetti/683296/

15 Ibid

16 Slip op dissent at 31

17 606 US at _____

18 Funding for abortions was not at issue as state and Federal law already prohibited such funding.

19 Slip op at 6

20 Slip op at 16

21 Slip op dissent at 6

22 Slip op dissent at 13

23 Slip op dissent at 22-23

Supreme Court Ruling in Trump v. CASA, Inc. *on Universal Injunctions*

By Julie A. Winkfield

Julie A. Winkfield

The Supreme Court of the United States has issued a significant decision in *Trump v. CASA Inc.,*[1] a case centered on whether, under the Judiciary Act of 1789, federal courts possess equitable authority to issue "universal injunctions"—injunctions that apply nationwide, extending relief to individuals who are not parties to the lawsuit.[2] The Court, in a 6-3 decision, made clear that universal injunctions likely exceed the equitable authority granted to federal courts by Congress. In other words, Congress has never conferred such sweeping power, and the Court found no historical or statutory basis for it. The litigation arose in response to President Trump's Executive Order 14160, which sought to limit birthright citizenship by redefining the circumstances under which a person born in the United States or its territories would be considered a citizen.[3] Specifically, the order declared that a person would not be a citizen at birth if:

1. Their mother was unlawfully present in the United States at the time of birth and their father was neither a U.S. citizen nor a lawful permanent resident; or
2. Their mother was lawfully but temporarily present in the U.S., and their father was not a U.S. citizen or lawful permanent resident.[4]

Plaintiffs—including individuals, organizations, and states—filed three separate suits challenging the order. They argued it violated the Fourteenth Amendment's Citizenship Clause and Section 201 of the Nationality Act of 1940. In each case, federal district courts issued universal injunctions blocking enforcement of the executive order nationwide.[5] Importantly, the Supreme Court did not address whether the executive order itself violated the Fourteenth Amendment or the Nationality Act. Instead, the Justices confined their review to the remedy: whether federal district courts may issue universal injunctions at all.

Justice Barrett, writing for the majority, traced the history of equitable relief, noting that universal injunctions were virtually unknown in federal litigation until the mid-20th century. The first recognized example dates to 1963, when the D.C. Circuit enjoined the Secretary of Labor "with respect to the entire [electric motors and generators] industry," not just the named plaintiffs.[6]

The Court referenced concerns, echoed in Justice Sotomayor's dissent, about the practical effects of universal injunctions. As the majority noted, plaintiffs need win only one such case to secure sweeping nationwide relief, while the government must prevail in every case to avoid it. The majority further posited that this dynamic can force high-stakes legal questions to be decided in rushed, underdeveloped proceedings, often through emergency appeals. The Court concluded that Congress had not extended authority for such broad remedies to federal district courts. Going forward, relief must generally be limited to the parties before the court unless authorized through other procedural mechanisms such as class actions.

Justice Amy Coney Barrett's majority opinion expressly noted that the ruling does not prevent plaintiffs from seeking similar relief by bringing certified class actions. This observation immediately prompted immigrant rights advocates to pivot their strategy.

Justice Sotomayor, delivered a searing dissent, warning that the majority's rejection of universal injunctions imperils fundamental constitutional protections. She underscored that the executive order challenged in CASA—which attempts to restrict birthright citizenship—is manifestly unlawful under settled constitutional authority, and that enjoining its enforcement does not harm the government but rather compels adherence to law. She stressed that equity historically allowed courts to afford remedies benefiting nonparties when necessary to achieve complete justice, citing "bills of peace"[7] and early common-law precedents. She cautioned that the ruling creates a dangerous precedent: "No right is safe in the new legal regime the Court creates," [8] because it enables the executive to flout settled law without effective judicial recourse.

On the same day as the decision was issued, two proposed class actions were filed, including one in New Hampshire before U.S. District Judge Joseph LaPlante. Judge LaPlante—an appointee of President George W. Bush—had previously expressed discomfort with universal injunctions, but he provisionally certified a class and issued an order blocking implemen-

tation of the executive order as to that class.[9] Judge LaPlante reasoned that denying citizenship to children who otherwise would qualify constitutes irreparable harm. "Citizenship alone," he said, "is the greatest privilege that exists in the world."[10]

The Supreme Court's decision removes universal injunctions as a tool for blocking the enforcement of executive actions on a nationwide basis. However, it leaves open the possibility of broad relief through class litigation, provided the class is properly certified. Therefore the executive order has no effect.

The ruling underscores that the law is not static; it evolves with culture, politics, and the realities of modern governance. While the Court's decision narrows the remedial powers of federal district courts, it also signals to Congress and the lower courts that questions of national identity, citizenship, and constitutional protection remain active and unresolved.

As advocates continue to litigate these issues, the path forward will be shaped by skilled legal argument, careful judicial consideration, and the enduring principle that our constitutional framework must adapt to protect both justice and the integrity of our national identity.

Endnotes

1 606 U.S. ____ (2025)

2 Ibid

3 Trump, Donald. "Protecting the Meaning and Value of American Citizenship." Federal Register, 20 Jan. 2025, https://www.federalregister.gov/documents/2025/01/29/2025-02007/protecting-the-meaning-and-value-of-american-citizenship.

4 Ibid

5 606 U.S. ____ (2025)

6 Ibid

7 Slip op dissent at 17

8 Slip of dissent at 8

9 Raymond, Nate. "Judge blocks Trump's birthright citizenship order after Supreme Court ruling." Reuters, July 10, 2025, https://www.reuters.com/legal/government/judge-weigh-blocking-trump-birthright-citizenship-despite-supreme-court-ruling-2025-07-10/

10 Ibid

GCBA Past President's Luncheon Friday, August 1, 2025

The Past Presidents Luncheon served as a time of reflection, connection, and a reaffirmation of the commitment required to hold the office of GCBA President. Each year, these gatherings honor the tradition of leadership that exemplifies professionalism and responsibility, ensuring it is both recognized and carried forward. With gratitude and respect, we welcome our outgoing 2025 President, Angela Wheeler, into this distinguished circle of Past Presidents.

Pictured (L-R): Seated: Brian M. Barkey, Angela N. Wheeler, Hon. Duncan M. Beagle, Edwin Jakeway, H. William Reising

Standing: Ronald Haldy, Elias J. Fanous, Michael A. Tesner, Hon. Valdemar Washington, William J. Brickley, Kurtis L.V. Brown, Timothy H. Knecht, Hon. Jessica J. Hammon, and Craig R. Fiederlein.

What I've Learned

By George Hamo

George Hamo

PRELUDE: I began reading Esquire magazine when I was 18. Still do, digitally. In 1998, Esquire began a series called "What I've Learned", featuring random thoughts from an array of people. Because our GCBA is so wonderfully diverse on so many levels, knowing the Bar Beat editors are welcoming articles, and believing (hoping) that this same series would work for us the way Esquire's has for over 27 years now, I'll start it off. I encourage all of us, *no matter one's age*, to write 'em down as they come to you, and share when you have 10-15 tidbits put together. Any thoughts will do, whether law related or not, or both, whether your words or someone else's, keeping with the title's theme. So, whether you're a young attorney, in the middle, or older, go for it. It might be fun to see what you write today, then what you write 10 years or so from now.

Judges may have (and usually do) some "interesting" courtroom moments. I remember the esteemed Judge Tom Yeotis, who was an original founder of Insight Recovery Center, sentencing someone who was before him on a probation violation for leaving the Insight program. After always so courteously allowing the defendant's full allocution, where the defendant verbally disparaged the Insight program, Judge Yeotis calmly said to him, "Mr. ___, I ordered you to <u>*complete*</u> the Insight program, not <u>*critique*</u> it!" Funny stuff! So, share your 'What I've Learned' thoughts, and maybe this series can last for decades too.

What I've learned …

- Look for three things in a person—intelligence, energy, and integrity. If they don't have the last one, don't even bother with the first two.
- Die with memories, not with dreams.
- Things you realize as you go—people always seem to be in a better mood at a greenhouse.
- Some cause happiness *wherever* they go, while others cause happiness *whenever* they go.
- Morning is God's way of saying one more time, go make a difference, touch a heart, encourage a mind, inspire a soul, and enjoy the day!
- Seek truth, not validation.
- Be the rare leader who makes others want to be better people.
- Grief doesn't have a timeline.
- Don't take a position on something until you're able to understand and talk about the opposing view better than the person advocating it.
- You never get the right thing by pursuing the wrong thing.
- If you have time to be petty, you're not consumed enough with your purpose.
- If you knew how quickly people forget the dead, you would stop living to impress people.
- If you begin and finish your days with thoughts of gratitude, you'll find yourself living from a place of abundance rather than lack. Those first and final moments set the tone for the many minutes that fall in between.
- Make it a habit to respect people without knowing their qualifications, title, or position.
- Love always wins.
- Sometimes I like to tell people, "I hope the rest of your day is as pleasant as you are," and then watch their face as they reason through whether I'm giving them a compliment or insulting them.
- Time . . . is the only currency you spend without ever knowing your balance. Use it wisely.

47th Annual Golf Outing

Thanks to everyone who took part in our 47th Annual Golf Scramble at the Flint Golf Club. The heat didn't stop anyone from having a great day on the green. Special thanks to our volunteers Mitchell Dembo, Brendan Docherty, Cheryl Tomaszewski, and Jackie White.

1st Place team: Steven M. Robb, Nick Horton, Spencer Spurlin, and Josh Hill.

Longest Drive Female: I'Lanta Robbins
Longest Drive Male: Josh Hill
Closest to the Pin Male: Mike Tomaszewski

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On the Bricks
EnZo's
Community Resolution Center
Great Harvest Bread Company

1st Place team: Steven M. Robb, Nick Horton, Spencer Spurlin, and Josh Hill

Targeted Threats: Protecting Against Spear Phishing in the Legal Environment

LindaLee Massoud

By LindaLee Massoud (Structured by Gemini AI based upon the author's prompts)

Recent alerts, such as the one from the GCBA regarding phishing attempts and a deceptive email seemingly from a Genesee County government office, underscore a critical and evolving threat: **spear phishing**. Unlike broad, untargeted phishing, spear phishing attempts are highly personalized and cunning.

Spear phishing occurs when malicious actors craft emails or text messages that appear to come from a trusted source. These communications leverage specific details—such as your name, office, professional role, or other personalized information—to deceive you into:

- Revealing sensitive information
- Downloading malware (often disguised as an attachment)
- Making fraudulent financial transactions

The familiarity of the sender's name or office, or the use of personalized details, can significantly increase the likelihood of a recipient responding to these deceptive overtures.

Common Impersonations:

Spear phishing attempts often masquerade as communications from:

- Office colleagues
- Legal entities (e.g., courts, bar associations)
- Financial institutions
- Health care institutions
- Legitimate vendors associated with your office
- Known charities

Keys to Identification:

Be vigilant for messages that exhibit these characteristics:

- **Highly Specific & Personalized:** They often reference details only a trusted contact would know.
- **Deceptive Sourcing:** The sender appears to be a trusted entity, mimicking their language, branding, and overall tone.
- **Urgent Tone:** They frequently demand immediate action, creating a sense of urgency to bypass critical thinking.

Proactive Protection Strategies:

Given the sophistication of these attacks, a proactive and cautious approach is essential:

- **Default to Suspicion:** Approach every unsolicited message with a healthy skepticism, regardless of the apparent sender.
- **Scrutinize Sender Details:** Meticulously examine email addresses for subtle misspellings, unusual characters, or deviations from official domains.
- **Verify Via Alternate Channels:** If a request seems unusual or urgent, verify its legitimacy by contacting the supposed sender through a different, established communication method (e.g., a known phone number), not replying to the suspicious email.
- **Avoid Direct Interaction:** Do not open suspicious attachments, download files, or click on links within unverified messages. However, safely **hovering** your mouse cursor over a link (without clicking) can reveal the true destination URL.
- **Engage IT Support:** Consult with your IT provider or department for verification of suspicious communications. They can also advise on implementing advanced prevention software.

While it is unfortunate that vigilance has become a constant necessity, a proactive and skeptical mindset serves as the most robust defense against the potentially devastating consequences of a cyber breach.

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