

# THE LEGAL EAGLE

A LEGAL NEWSPAPER FOR KIDS

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## Understanding Ranked-Choice Voting

by Robin Roenker


Recently, voters in New York City used ranked-choice voting (RCV) to select the winner of the Democratic primary race for mayor. While New York may be the largest U.S. city to have adopted this form of voting, it's not alone.

According to FairVote, a **nonpartisan** vote-reform advocacy group, 22 **jurisdictions** in the U.S. currently use ranked-choice voting for certain types of elections, with 53 more prepared to adopt the voting method in upcoming elections. In 2020, five states (Alaska, Hawaii, Kansas, Nevada and Wyoming) used ranked-choice voting in the Democratic primary for President of the United States.

Maine is currently the only state using ranked-choice voting for congressional and presidential elections, though Alaskans recently voted to adopt the system for statewide federal elections beginning in 2022.

### How does ranked-choice voting work?

In an election, the majority wins, right? Actually, **plurality voting** is the most common electoral system used in the U.S. In plurality voting, also known as winner-takes-all voting, the candidate who receives the most votes wins; however, that doesn't necessarily mean that the candidate won by a majority.

 **Your Ranked-Choice Ballot**

Rank up to 4 candidates. Mark as many as you like in each column.	First Choice	Second Choice	Third Choice	Fourth Choice
Candidate A	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Candidate B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Candidate C	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Candidate D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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## Balancing Remote Learning and Student Privacy

by Maria Wood

In 2020, when schools across the country were forced to abruptly disband in-person learning due to the COVID-19 pandemic, school districts, administrators and teachers scrambled to find technological solutions that would allow for online learning from students' homes.



Many educators turned to classroom management software that can monitor students' online behavior. These programs allow teachers to view a student's screen, seeing what tabs are open and even what websites they visited. If the teacher sees the student is logged onto, say YouTube, the teacher

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## Supreme Court Takes on the Case of the Cursing Cheerleader

by Suzi Morales

Imagine if your high school drama became the subject of a U.S. Supreme Court decision. That's what happened in June 2021 when the Court decided *Mahanoy Area School District v. B.L.*, which considered how the First Amendment to the U.S. Constitution applies to the free speech rights of public school students outside of school grounds.

In 2017, Brandi Levy, or B.L. as she was called in court documents, was a rising sophomore at Mahanoy Area High School in Mahanoy City, PA (she's now a college student). Brandi was frustrated. She had tried out for the varsity cheer squad but instead was assigned to the junior varsity squad. She had tried out for the softball team but didn't get the position she wanted.

So, as so many students do today, she turned to social media, posting a picture on Snapchat of herself and a friend with their middle fingers raised. The caption read: "F\*\*\* school f\*\*\* softball f\*\*\* cheer f\*\*\* everything."

After a screen shot of B.L.'s Snapchat post was passed along to a cheerleading coach, she was



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suspended from the J.V. team for the upcoming school year. Even though she apologized, school leadership all the way up to the school board maintained her punishment. B.L. and her parents sued the school district in a U.S. district court, claiming her First Amendment rights had been violated.

As U.S. Supreme Court Justice Stephen Breyer described in the Court's **majority opinion**, "B.L. did not accept the coach's decision with good grace." The Court however, sided with her in an 8 to 1 ruling. The decision represented the first time in more than 50 years that the Court came down on the side of student free speech.

"It might be tempting to dismiss [Levy's] words as unworthy of the robust First Amendment protections

discussed herein," Justice Breyer wrote, "but sometimes it is necessary to protect the superfluous [unessential] in order to preserve the necessary."

The U.S. Supreme Court has interpreted "abridging the

freedom of speech" outlined in the First Amendment to include limits on how public schools can punish students for their words. Until 2021, the Supreme Court had mainly addressed student speech on campus or at school-related activities. B.L.'s case changed that.

### More on the case

The district court ruled in B.L.'s favor; however, the school district **appealed** the decision to the U.S. Court of Appeals for the Third Circuit, which also found in favor of B.L. The Third Circuit held that because B.L. made the Snapchat post off school grounds—at a local convenience store—the school could not punish her for her post.

The school district then appealed that decision to the U.S. Supreme Court, which also found in favor of B.L., but with different reasoning than the Third Circuit. The Court rejected the bright-line rule the Third Circuit had made between on-campus speech, which schools could regulate, and off-campus speech, which the Third Circuit held schools could not punish. Instead, the U.S. Supreme Court held that schools may in some circumstances regulate off-campus student speech, but B.L.'s case did not fit any of those circumstances. In his opinion, Justice Breyer outlined such circumstances as including, among other things, bullying, threats targeting teachers or other students and breaches of school security.

## History of student speech decisions

To understand the Court's decision in the *B.L.* case, Mike Hiestand, senior legal counsel for the Student Press Law Center (SPLC), a non-profit organization that aims to protect press freedom rights for student journalists, says it is important to review the history of other student speech cases.

Perhaps the most important student speech case, which the Court relied on in part for its decision in *B.L.*, is the landmark 1969 case of *Tinker v. Des Moines Independent Community School District*. That case famously found that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The *Tinker* case involved students protesting the Vietnam War. Mary Beth Tinker and other students had been suspended after they wore black arm bands to school. The U.S. Supreme Court defined two types of on-campus student speech that a public school could lawfully regulate: 1) unlawful speech, such as incitement to violence, or 2) speech that caused a "material and substantial interference" with school operation. The Court held that the students' arm bands did not fall within either category and therefore the students could not be punished.

"That was the law of the land," Heistand says, and it was applied by lower courts to "all sorts" of student speech cases for years; however, exceptions to the *Tinker* rule have been added over the years as well.

According to Heistand, there are several key U.S. Supreme Court decisions on student speech after *Tinker*. One is *Hazelwood School District v. Kuhlmeier* (1988), which Heistand said "significantly altered the landscape" on student speech. The ruling held that the *Tinker* standard only applied to speech that was not sponsored by the school. In other words, Mary Beth Tinker chose on her own to wear an arm band and was not representing the school in any way. In contrast, the



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# Juvenile Sentencing at the U.S. Supreme Court

by Michael Barbella

For decades, the U.S. Supreme Court has treated the issue of sentencing juveniles differently than the sentencing of convicted adults. Since 2005, the Court has decided five prominent cases dealing with juvenile defendants in the criminal justice system. With the latest case, *Jones v. Mississippi*, decided in April 2021, the Court went in a slightly different direction.

Age has been a fairly thorny issue for the U.S. Supreme Court over the last three decades as it has debated both capital punishment for minors and juvenile life without parole (JLWOP) prison terms. Relying on scientific research, the Court has rendered various opinions acknowledging that adolescents are less culpable than adults for their actions. For example, in the 1982 case of *Eddings v. Oklahoma*, the Court stated: “Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment expected of adults.”

The Court has ruled the most extreme criminal sentences for adults violate the U.S. Constitution’s prohibition against cruel and unusual punishment, as outlined in the Eighth Amendment, when applied to children. Consequently, juvenile sentencing laws have changed significantly over the last 15 years.

## Handling juvenile criminals

In 2005, with its decision in *Roper v. Simmons*, the Court ruled that imposing the death penalty for crimes committed by anyone under the age of 18 is unconstitutional. In 2010, the Court’s decision in *Graham v. Florida* barred sentencing juveniles to life without parole for non-homicide crimes. Then in 2012, with its decision in *Miller v. Alabama*, the Court barred the mandatory minimum of life without parole for juveniles, no matter the crime. A subsequent decision in *Montgomery v. Louisiana* clarified that the Court’s decision in *Miller* applied **retroactively**. Under the Court’s ruling in *Montgomery*, states are not required to re-litigate JLWOP prison terms, but they must allow minors convicted of murder to be considered for parole. The Court found that JLWOP is “a disproportionate sentence for all but the rarest of juvenile offenders, those whose crimes reflect ‘irreparable corruption.’”

According to The Sentencing Project, a research and advocacy center based in Washington, DC, whose goal is to reduce U.S. imprisonments and address racial disparities in the criminal justice system, these U.S. Supreme Court decisions affected mandatory sentencing laws in 28 states and the federal government. In the last five years, according to a 2020 national Sentencing Project survey, the number of juveniles serving a life sentence with no possibility of parole has fallen



38 percent, with nearly 1,500 minors still fated to spend the rest of their days in a prison cell.

“Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions,” former Supreme Court Justice Anthony M. Kennedy wrote in the Court’s 2016 *Montgomery v. Louisiana* opinion. “Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*’s central intuition—that children who commit even heinous crimes are capable of change.”

## Then came Jones

With a 6-3 decision in *Jones v. Mississippi*, the U.S. Supreme Court **upheld** the life without parole prison term of Brett Jones, a Mississippi man convicted of stabbing his grandfather in 2004 when he was 15 years old. Jones was resentenced after the 2016 *Montgomery v. Louisiana* ruling but received another life without parole prison term despite showing signs of reform. He had earned a high school diploma while incarcerated and had been a model prisoner. In his **appeal**, Jones contended the sentencing judge failed to find him incapable of rehabilitation before jailing him for life, as mandated by law.

The U.S. Supreme Court, however, argued that a separate finding of “permanent incorrigibility” is not necessary to condemn criminals to lifetime prison terms. Incorrigibility is an offense specific to the juvenile justice system and happens when someone under the age of 18 refuses to accept adult authority. Permanent incorrigibility, also known as irreparable corruption, means that someone is deemed to be incapable of rehabilitation.

“In Jones’s view, a sentencer who imposes a life without parole sentence must also either (i) make a separate factual finding of permanent incorrigibility, or (ii) at least provide an on-the-record sentencing explanation with an ‘implicit finding’ of permanent incorrigibility,” Justice Brett M. Kavanaugh wrote in the Court’s **majority opinion**. “The Court has already ruled that a separate factual finding of permanent incorrigibility is not required. The *Miller* Court mandated ‘only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing’ a life-without-parole sentence. *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence. And *Montgomery* did not purport to add to *Miller*’s requirements.”

Though it appears to mark a departure from its earlier pro-juvenile decisions, the Court’s ruling in the *Jones* case reaffirms its earlier rulings on juvenile sentencing, according to J.C. Lore III, a professor at Rutgers Law



## Remote Learning CONTINUED FROM PAGE 1

can close that tab.

Although the goal of these systems is to keep students on task and engaged in class, some parents and students feel they place an unwelcome intrusion on their privacy. Going forward, with online learning still a viable option, the challenge for teachers and administrators will be to balance effective online instruction while also preserving student privacy.

### Somebody's watching me

As classroom management tools became more widespread in remote classrooms, parents and students expressed worry about their use. J.P. Kerrane, a 15-year-old freshman in the Boulder Valley school district in Colorado, expressed unease with these programs, telling *EducationWeek* that the programs make some of his fellow students feel someone is constantly “watching over their shoulder.”

Anisha Reddy is policy counsel with the Youth & Education Privacy Project at the Future of Privacy Forum, a think tank based in Washington, DC that focuses on data privacy issues. Reddy explains that many of the tech tools teachers and districts logged onto while teaching remotely weren't specifically made for the unique privacy requirements of K-12 students and might not have been properly vetted. One of the biggest privacy risks that Reddy's organization saw in 2020, while many students were learning remotely, was that teachers could potentially download apps without a full understanding of how those apps protected student privacy.

“There are a lot of unique privacy requirements that apply to student data, and almost every state has a student privacy law in place,” Reddy says. “Some of those states have specific requirements on third-party vendors that schools rely on.”

One benefit that came out of remote learning is that it shone a light on student privacy, Reddy notes. Learning systems vacuum up enormous amounts of data on each student, she says, which comes with the responsibility of how to safeguard that data and ensure it's used only for school purposes.

In March 2021, for instance, schools in Montclair temporarily deactivated use of the classroom management software GoGuardian Teacher in response to parents' and students' concerns over privacy. According to GoGuardian, approximately 20 million students in 14,000 schools nationwide use one of its services. The platform was installed on district-issued Chromebooks. Parents were concerned not only about their children's privacy but also whether data on their personal devices could be swept up as well. With

some systems, personal devices could be affected if they are synced with a school account. For its part, GoGuardian stated that the data it collects is owned by the school district and is not sold to third parties.

### Federal, state laws on student privacy

Federal and state governments have taken note of the heightened protection student information demands and have passed laws specifically on student data. Chief among those laws is the Federal Educational Rights and Privacy Act (FERPA), which addresses educational technology, or edtech, and student privacy.

Another federal law, the Children's Online Privacy Protection Act (COPPA), pertains to student data privacy as well. It spells out the requirements for managing information on children under the age of 13. Although collection of student data by edtech companies is permitted, those companies can only use that information for educational purposes. The law prohibits the sale of student data for commercial purposes.

Reddy notes in addition to FERPA and COPPA more than 40 states have student privacy laws on the books. The laws vary, but mostly center on what technology districts can use, security requirements, and language that should be in vendor contracts.

In New Jersey, federal and state laws govern the protection and access to student data, including the Open Public Records Act (OPRA), and the New Jersey Pupil Records Act (NJPRPA). In 2019, the New Jersey Supreme Court ruled student records must be subject to enhanced protection. The ruling stated student records may not be disclosed under the Open Public Records Act even if personal identifiable information (PII) is **redacted**.

### Programs not vetted properly

In the rush to online learning, some districts may not have fully reviewed these platforms to ensure each shielded student privacy in line with federal and state laws. Some weren't intended for classroom use, while others, like Zoom for Education, are built with FERPA compliance features.

Reddy advises districts to thoroughly evaluate programs before use in the classroom to make sure those extra privacy protections are in place. It's also vital for districts to communicate with parents on which programs are being used and for what purposes. Much of the debate over classroom monitoring tools centered on the fact that parents were unaware of these tools and how they were being implemented in the classroom.

“Schools districts should have a point person to make sure teachers are aware of questions that could come up, and make sure they're equipped to answer those questions, or direct parents to someone who can,” Reddy says.

### Students have a stake, too

Juliana Cotto, who is also policy counsel with the Youth & Education Privacy Project at the Future of Privacy Forum, recommends teachers talk to students about online learning



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programs. Younger students, for instance, may not be aware of what can be seen in the background on Zoom sessions. Cotto suggests instructing them on which settings and options they can use as well.

Since so much of their lives are lived online, Cotto points out that it is an opportunity for teachers to educate students about how to be responsible in a digital world. For example, she suggests asking students: How do you have safe relationships online where you haven't met the person? What are safe relationships? What does safe information sharing look like?

Students should also have the option to turn off their camera, Cotto says. Teachers prefer the camera on because it replicates in-person learning. A student's perspective, however, is quite different, she notes. For one, a student may not be comfortable with a teacher peering into their current living space.

"The ability to see their own face can also make students overly conscious of their reactions and appearance," Cotto says. "It might be a distraction from learning and engaging in the class."

Another aspect of student privacy is social media monitoring. Many districts have employed software that monitors a student's social media posts to discover if a student may be considering self-harm or harm to others. Although this, in theory, could prevent a tragedy, sometimes innocent statements by students may be flagged, leading to unnecessary intrusions into their lives.


Reddy says students should be aware of these monitoring tools and how and why they are being used. "Schools shouldn't unilaterally implement these tools

without understanding how students feel about this kind of monitoring."

According to Cotto, knowing monitoring tools are in place could have the unintended consequence of deterring students from seeking help.

"If a student were to know their search history was being monitored that might prevent them from seeking out services they might need," Cotto says. "The monitoring could have a chilling effect."

An EdWeek Research Center national survey revealed seven out of 10 educators plan to offer remote learning options for students even when the pandemic is over. If schools continue online learning, districts will be better prepared for it this time around, Cotto predicts. The pandemic and the use of technology brought up new questions.

"The silver lining could be the ability to foster a culture of privacy and an understanding how privacy intertwines with other school priorities," Cotto says. 

### DISCUSSION QUESTIONS



1. How do you feel about classroom management software that allows for the monitoring of your screen time/habits?
2. What expectations should Americans have with respect to data privacy in today's world where many of our movements are tracked through social media, cellphones, etc.? Explain your answer.
3. How important is data privacy to you? Explain your answer.

## Juvenile Sentencing CONTINUED FROM PAGE 3

School—Camden and the co-author of one of the country's leading books on trial advocacy.

"What is still unconstitutional is any mandatory sentence of life without parole," Professor Lore says. "*Miller* found that mandatory sentencing of life without parole is unconstitutional. What this new ruling says is that it's constitutional to sentence a child to life without parole as long as it is part of a discretionary sentencing system. [The Court in *Jones*] reaffirmed the decisions in *Montgomery* and *Miller* but made clear that a finding of permanent incorrigibility is not a requirement for a sentence of life without parole."

### In dissent

In her **dissenting opinion**, Justice Sonia Sotomayor pointed out the racial disparities of JLWOP sentences, citing that 70 percent of those serving these sentences are children of color. Justice Sotomayor wrote in her dissent that the *Miller* and *Montgomery* decisions were "not proved unworkable. To the contrary, they have spurred reforms across the country while avoiding intruding more than necessary upon states'

**sovereign** administration of their criminal justice systems."

In a statement after the Court's decision was announced, the NAACP Legal Defense and Educational Fund, Inc. said, "Requiring sentencing courts to make findings of permanent incorrigibility will help avoid biased sentencing and reduce the risk that sentencing courts will continue to impose life without parole sentences on Black children who are capable of reform."

Justice Sotomayor wrote, "Jones and other juvenile offenders like him seek only the possibility of parole. Not the certainty of release but the opportunity, at some point in their lives, to show a parole board all they have done to rehabilitate themselves and to ask for a second chance."

Although the U.S. Supreme Court denied his appeal, Jones could still obtain a reduced prison sentence by presenting his "moral and policy" arguments to officials in Mississippi (i.e., through the state legislature, state courts or governor).

"Importantly, like *Miller* and *Montgomery*, our holding today does not preclude the States from imposing additional sentencing limits in cases

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## Ranked Choice Voting **CONTINUED FROM PAGE 1**

For example, let's say there are three candidates running for office. For our purposes, let's say Candidate A receives 40 percent of the vote, Candidate B receives 35 percent of the vote and Candidate C receives 25 percent. With 40 percent of the vote, Candidate A would be the winner because they received a plurality. Candidate A did not, however, receive a majority of the vote, which would be more than 50 percent.

Unlike plurality voting, where voters vote for a single candidate, ranked-choice voting allows voters to rank the candidates in order of preference, noting their first choice, second choice, third choice and so on. In ranked-choice voting, if a single candidate receives a majority of voters' top choice votes, then that candidate wins. If there is no majority winner, in other words, if no candidate achieves more than 50 percent of first choice votes, then the candidate that received the least number of votes is eliminated. Voters who listed the eliminated candidate as their first choice will have their votes reallocated to their second-choice candidate. This process continues until a single candidate achieves a majority of the votes.

Critics of plurality voting point out that elections with more than two candidates can result in electing a candidate that received a minority of the votes cast. For instance, in a contest with four nominees, to win a plurality, a candidate would only need a little over 25 percent of the vote.

While ranked-choice voting is gaining attention due to its use in recent high-profile elections like the New York City mayor's race, it's not new. According to the Ranked Choice Voting Resource Center, a division of the Election Administration Resource Center, a nonpartisan election policy nonprofit, ranked-choice voting has been used around the world, in various formats, since its invention in Europe in the 1850s. In the U.S., ranked-choice voting was used in local elections by dozens of cities

from the 1930s to the 1960s, when it fell out of fashion.

According to Craig Burnett, a political science professor at Hofstra University, all voting reforms are cyclical.

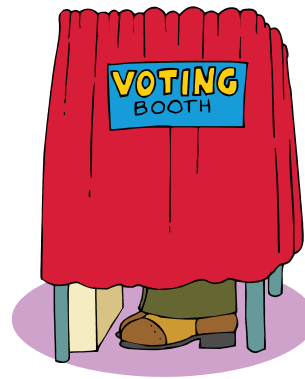
"It forces everyone to ask themselves, 'How should your version of democracy produce winners?'" Professor Burnett says.

### **Is ranked-choice voting legal?**

Some detractors of ranked-choice voting argue that it violates the "one person, one vote" principle, meaning that individuals should have equal representation in voting. The principle stems from several voting rights cases in the 1960s, primarily the U.S. Supreme Court case *Reynolds v. Simms* (1964), which dealt with the size of electoral districts. The decision of the Court said that electoral districts must be roughly equal in population so that one district does not have more representation than another.

Critics of RCV claim the system gives a single voter multiple votes, thereby violating the "one person, one vote" principle. Proponents of RCV contend that the system still gives each voter a single vote because only the vote in the final round counts. The technical term for this is called single transferable vote. So far, lower courts have upheld the legality of ranked-choice voting systems with cases such as *Stephenson v. Ann Arbor Board of Canvassers* (1975) and *Minnesota Voters Alliance et al. v. the City of Minneapolis* (2009).

More recently, in Maine, several legal attempts to overturn the usage of ranked-choice voting have been dismissed. In 2018, Maine State Rep. Bruce Poliquin filed a lawsuit (*Baber et al v. Dunlap*) in federal court to block the state's use of ranked-choice voting in federal elections, claiming the voting system violates the U.S. Constitution. That same year, a federal judge in Maine



upheld the constitutionality of the ranked-choice approach. In 2020, both the Maine Supreme Judicial Court and the U.S. Supreme Court denied efforts by the Republican Party of Maine to block usage of ranked-choice voting in the state's presidential election.

Similarly, in July 2021, Anchorage Superior Court Judge Gregory Miller ruled against attempts to block ranked-choice voting in Alaska, determining that the state's newly adopted RCV system is legal. That ruling opens the door for RCV to be used there for the first time in a general election in 2022, although the **plaintiffs** in the case plan to **appeal** to the Alaska Supreme Court.

### **Advantages of ranked-choice voting**

"Ranked-choice voting gives voters a chance to provide a fuller expression of their preferences among candidates, says David Kimball, a political science professor at the University of Missouri-St. Louis.

Essentially, advocates argue that RCV reduces the risk that two candidates with broad, overlapping support will split the vote, allowing a third candidate who lacks majority support to win the election. This is what is called a "spoiler" candidate. It is when a third-party candidate enters the race and splits the vote, drawing votes away from an ideologically similar main party candidate, which unintentionally helps the candidate with an opposing viewpoint gain a larger percentage of the vote in the process.

Proponents also believe that ranked-choice voting may lead to campaigns with less polarization and name-calling among candidates, creating a deeper focus on real issues. The theory is that rather than focusing on only a select group of voters for whom they are the top choice, to have the best chance at winning a ranked-choice election, candidates also need to appeal to voters



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for whom they might be a second or third choice.

"A plurality-style voting system where there's only one winner and everyone else loses really encourages attack-style politics," Professor Kimball says. "It encourages negative campaigns."

In addition, RCV could eliminate "lesser-of-two-evils" voting. In most general elections, there are only two viable candidates—Republican or Democrat—which sometimes leads to voters choosing the candidate they dislike the least.

### Disadvantages of ranked-choice voting

Even proponents of ranked-choice voting admit that the process is more involved than traditional voting.

"The biggest argument against ranked-choice voting is that it's a more complicated task," says Professor Kimball. "There's also newness there, which might be confusing to voters, so you have to explain the rules and how it works."

Teaching voters how to rank order candidates on the ballot – and encouraging them to do enough research about candidates to be able


to knowledgeably form preferences – takes substantial voter education. Some research suggests these challenges can lead to lessened voter participation by disadvantaged or marginalized voters when ranked-choice voting is used.

"If you're working two jobs, or if you have a family and your first concern is about making sure there's food on the table, voting may not be at the forefront of your mind – and you may not have time to sit and think in-depth about your voting preferences," says Professor Burnett.

Additionally, research has suggested that highly educated voters are more likely to fill out ranked-choice ballots in full – rather than choosing only one candidate – and that the process, as a result, disadvantages less educated voters.

"A key practical criticism [of ranked-choice voting] is that if people are confused by the system, they may just not turn out to vote altogether," says Ken Kollman, a political science professor at the University of Michigan.

While ranked-choice voting has both detractors and proponents, Professor Kollman says there is no such thing as a perfect voting system.

"There are a lot of very bad voting systems that don't last very long, because people realize right away that they are bad," Professor Kollman says, and notes that "ranked-choice voting is well-liked by people who study voting." 

### DISCUSSION QUESTIONS



1. As the article points out, critics of RCV contend that it violates the "one person, one vote" principle, while proponents of the system say it does not and voters are still only casting one vote. Which argument do you find more compelling? Explain your answer.
2. Professor Kimball says that plurality voting encourages attack-style campaigns. How do you feel about that? What measures do you think could be taken to promote more positive political campaigns?
3. How do you feel about plurality voting, where the winner does not need to gain a majority of support from voters?



## Juvenile Sentencing CONTINUED FROM PAGE 5


involving defendants under 18 convicted of murder," Justice Kavanaugh wrote. "States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole."

Professor Lore says that what the Court is saying is that states should be the ones to decide whether life without parole is something they feel is morally acceptable.

"In other words, if states don't want life without parole to be a possible sentence for a child, then they should enact their own laws," he says. "Many states have chosen to do so or interpreted their state constitutions to have a greater protection of children than the U.S. Constitution."

Twenty-five states currently ban JLWOP (Mississippi is not one of them), according to The Sentencing Project. Of the remaining 25 states that allow such punishment, six have no

prisoners serving lifetime jail terms for crimes committed in their youth. Judges in the 25 states that allow JLWOP now may have more legal authority to mete out lifetime prison terms for minors.

"For those states that haven't banned the sentence of life without parole for children, [the court decision] makes it somewhat easier to hand down that sentence," Professor Lore explains. 

### DISCUSSION QUESTIONS



1. How do you feel about sentences of life without parole for juveniles that have committed murder?
2. How do you feel about labeling someone "permanently incorrigible?"

## Free Speech CONTINUED FROM PAGE 2

*Hazelwood* case involved a student newspaper, provided as part of school curriculum, that published an article about teen pregnancy. In its ruling, the Court stated that a standard of “legitimate pedagogical [educational] concern” applied to the school’s regulation of the students’ school-sponsored speech in the newspaper, and it could be regulated.

With the 1986 case of *Bethel School District No. 403 v. Fraser*, the Court held that Matthew Fraser’s school could punish him for giving a speech at a school assembly that included “offensively lewd and indecent” content.

More recently, in the 2007 case of *Morse v. Frederick*, a high school senior in Juneau, Alaska unfurled a banner while viewing the Olympic torch relay across the street from his school. The banner read: “Bong Hits 4 Jesus.” Joseph Frederick was suspended and eventually sued his school. The U.S. Supreme Court ruled in favor of the school, holding that, because the school had encouraged students to attend the event, the sign was in a new category called “school-sanctioned speech.” Because the sign was interpreted to advocate for illegal drug use, the student could be punished.

### Why the First Amendment protected B.L.

At the time the U.S. Supreme Court took the *B.L.* case, Heistand says the ability to limit off-campus student speech was becoming “a more and more important question” given the increase in student use of phones and other technology.

In deciding in B.L.’s favor, the Court recognized difficulties drawing the line between on-campus and off-campus behavior. Instead of simply ruling that B.L. could not be punished for her posts because she was not on school grounds, the Court considered whether the activity

occurred in an area where parents, rather than schools, would normally take responsibility. The Court also noted that regulating student speech both on and off campus would “include all the speech a student utters during the full 24-hour day.”



In the lone **dissenting opinion** of the Court, Justice Clarence Thomas indicated that schools should have “more authority, not less, to discipline students who transmit speech through social media,” pointing out how rapidly information on social media can spread.

As an advocate for student journalists, Heistand called the *B.L.* decision a “mixed bag” for student speech. “Certainly, the student won,” Heistand says, but he and many other legal experts noted that the ruling left open many questions of when schools can punish a student’s speech off school grounds.

In his opinion, Justice Breyer noted the importance of teaching students what their First Amendment rights are.

“Schools have a strong interest in ensuring that future generations understand the workings in practice of

the well-known aphorism [saying], ‘I disapprove of what you say, but I will defend to the death your right to say it,’” Justice Breyer wrote.

### DISCUSSION QUESTIONS



1. What do you think of the Court’s decision in *B.L.*? Think of a time when you were frustrated at school. How would you handle your anger? Would it be different or similar to how *B.L.* handled hers?
2. In his dissent, Justice Thomas indicated that social media has a “greater tendency to harm the school environment.” What potential ways can social media harm a school environment? In what ways can social media enhance a school environment?
3. Justice Breyer used the saying: “I disapprove of what you say, but I will defend to the death your right to say it.” What do you think that saying means? Would you defend someone’s right to free speech so forcefully if you did not also agree with them?

## GLOSSARY

**appeal** — a request that a higher court review the decision of a lower court.

**appealed** — when a decision from a lower court is reviewed by a higher court.

**dissenting opinion** — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

**jurisdiction** — authority to interpret or apply the law.

**majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

**nonpartisan** — not adhering to any established political group or party.

**plaintiff** — person or persons bringing a lawsuit against another person or entity.

**plurality voting** — a system of voting that requires the winner to have a greater number of votes than other candidates, but not necessarily a majority.

**redacted** — to censor or obscure text for legal or security purposes.

**retroactively** — taking effect from a date in the past.

**sovereign** — indisputable power or authority.

**upheld** — supported; kept the same.