



**AMERICANS FOR
PROSPERITY**
FOUNDATION

SCOTUS October 2021 Term in Review

Americans for Prosperity Foundation continues to engage in cases before the Supreme Court with one unifying theme: liberty.

- On criminal justice reform, we advocated for proper implementation of the First Step Act, which will reduce sentences for incarcerated persons when warranted, and asked the Court to review the outrageous practice of courts sentencing defendants for acquitted conduct.
- On transparency, we backed the ACLU in an effort to force courts to disclose their decisions on domestic surveillance.
- On free speech, we advocated for a coach to freely engage in private prayer.
- On education, we asked the Court to ensure students have equal access to generally-available state education funds, regardless of the religious nature of their schools.
- On regulation, we asked the Court to return Congress to its proper role—legislating—and ensure unelected, unaccountable administrative agencies aren't overstepping their constitutional bounds by making law.

These are just a few examples of our broad engagement. The consistent theme in every case, regardless of the plaintiff or the legal issue, is asking the Court to apply the text of the law and Constitution and, as a result, promote liberty.

17 TOTAL
AMICUS
BRIEFS
FILED

AMICUS ON MERITS: **7**
6 WINS | 1 LOSS

AMICUS ON CERT: **10**
2 GRANTS
2 PENDING
6 DENIALS



Amicus Briefs on the Merits

FREE SPEECH AND PEACE

Kennedy v. Bremerton School District

WIN — The Supreme Court held “[t]he Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.”

[Decision](#) - [Brief](#) - [Blog](#) - [Statement](#)

Court’s vote: 6-3

City of Austin v. Reagan National Advertising

LOSS — The Supreme Court held the City of Austin’s on-premise/off-premise distinction is facially content neutral under the First Amendment.

[Decision](#) - [Brief](#) - [Blog](#)

Court’s vote: 6-3

EDUCATION

Carson v. Makin

WIN — The Supreme Court held Maine’s “nonsectarian” requirement for an otherwise generally available tuition assistance program violates the Free Exercise Clause. The Court also clarified there is no constitutionally significant difference between use-based discrimination and status-based discrimination under the Free Exercise Clause.

[Decision](#) - [Brief](#) - [Blog](#) - [Statement](#)

Court’s vote: 6-3

ADMINISTRATIVE STATE AND REGULATIONS

West Virginia v. EPA

WIN — The Court reaffirmed that only Congress—not federal agencies—has the power under the Constitution to make public policy choices on matters of vast economic and political significance, properly returning these matters to the legislative process.

[Decision](#) - [Brief](#) - [Op-Ed](#) - [Statement](#)

Court’s vote: 6-3

American Hospital Association v. Becerra

WIN — The Court independently decided a statutory interpretation question without citing *Chevron*—and thus not putting a thumb on the scale in favor of the government or deferring to the agency’s views of what the law is—unanimously rejecting the agency’s interpretation of the statute.

[Decision](#) - [Brief](#)

Court’s vote: 9-0

Becerra v. Empire Health Foundation

WIN — The Supreme Court independently decided the statutory interpretation question without relying on *Chevron* deference or otherwise putting a thumb on the scale in favor of the government—despite the fact that multiple lower courts had relied on *Chevron* deference to uphold the regulation.

[Decision](#) - [Brief](#)

Court’s vote: 5-4

CRIMINAL JUSTICE REFORM

Concepcion v. United States

WIN — The Supreme Court ruled federal judges have discretion to consider incarcerated persons’ post-sentencing conduct—including efforts at rehabilitation—as well as other recent changes to federal sentencing law in handling requests for sentence reductions filed pursuant to the First Step Act.

[Decision](#) - [Brief](#)

Court’s vote: 5-4

AMICUS BRIEFS SUPPORTING PETITIONS FOR CERT

GRANTED

Axon v. Federal Trade Commission
303 Creative v. Elenis

PENDING

Buffington v. McDonough
McClinton v. United States

DENIED

Gaspar-Felipe v. United States
ACLU v. United States
Osby v. United States

Lent v. California Coastal Commission
McDonald v. Firth

American Association of Journalists and Authors v. Bonta