

# THE GAVEL

VOLUME 73, ISSUE 4

February 2025

## Union Wave Hits Cultural Institutions – And It’s About Time

**Philipp Corfman**  
Managing Editor

The United States has recently seen a well-documented surge of interest in labor organizing. Union approval is at its highest rate since the 1960s, and even the 2024 Republican National Convention featured a prominent labor speaker. The National Labor Relations Board (NLRB) has reported that annual union petitions, which are filed by workers seeking a union election in their workplace, have doubled from 2021 to 2024. While the overall unionization rate remains low (about 10% overall, 6% in the private sector), the number of unionized workers in the private sector has finally begun to increase after decades of decline.

Much attention has been paid

to “traditionally” unionized industries like transportation and manufacturing, which have both seen major victories (e.g. the Teamsters’ UPS contract renegotiation, the UAW’s stand-up strike against the Big Three, and the unionization of a Volkswagen plant in Chattanooga). Interest has also focused on less traditionally unionized but still recognizably “working class” organizers, like service employees at Starbucks and Whole Foods and warehouse workers at Amazon.

However, unions have seen some of their greatest success in an unexpected area: cultural institutions. The Legal Intelligencer reported that over 60,000 cultural workers unionized in 2022 alone, and thousands more have followed. Beginning in 2020, a growing

number of employees of cultural institutions like museums, zoos, aquariums, and conservatories have responded to an array of grievances by organizing, from the Philadelphia Museum of Art to, among many others, the Guggenheim Museum in New York, the Shedd Aquarium in Chicago, the Los Angeles Museum of Contemporary Art, and, in Ohio, the Gateway Film Center, Wexner Art Center, Columbus Museum of Art, Cincinnati Contemporary Arts Center, and Cleveland Institute of Music.

Many of these workers shared the same concerns as everyone else—pandemic safety, workplace discrimination, sexual harassment, and stagnating salaries failing to keep up with inflation and housing costs. For example, Jacobin

noted that a recent job posting at the Guggenheim lists its base salary as \$55–60,000, which, given the average cost of a New York studio apartment, would require an employee to spend 72% of their income on rent.

They also have a similar type of class dynamic as that seen in the private sector. Just as much as any corporation, nonprofit cultural institutions are run by the rich. Nonprofit boards are generally made up of wealthy donors, and prominent cultural institutions typically dole out extremely high salaries to their top executives. They have very little in common with their employees who are struggling to get by.

Cultural institutions can also be uniquely exploitative because of their competitive nature. It is extremely difficult to break into

cultural fields like art, music, and film; it requires aggressive networking, intensive baseline education (often accompanied by ruinous student debt), and a lot of luck. Working for a conservatory or a museum can give workers a leg up in these fields; as some have put it, these workers are paid in “cultural cachet.” This is another tool for exploitation—it leads workers to justify the undervaluing of their own work, and makes them terrified of losing their competitive jobs for speaking out against poor wages, unsafe working conditions, and sexual harassment.

The strain of the pandemic and inflation pushed these workers past the breaking point, and SEE **CORFMAN**, page 4

## Pour One Out for Jimmy Carter

**Sam Santavicca**  
Gavel Contributor

At James Earle Carter Jr., the thirty-ninth president of the United States and accomplished humanitarian, passed away on December 29th, 2024, at 100 years old. He was the first president to be born in a hospital.

A Nobel laureate, state senator, governor of Georgia, peanut farmer, author, painter, nuclear engineer, naval officer, woodworker, and Sunday school teacher, Carter was likely the final “renaissance man” to be elected president.<sup>1</sup> Serving in that capacity from 1977-81, he oversaw the transformation of an economy marred by stagflation and the aftermath



Image from NPR News

of the Vietnam War to one of strong growth and booming markets for the next 40 years. By appointing Paul Volcker as Chairman of the Federal Reserve and axing regulations on airlines, trucking, energy, and even craft beer, Carter pioneered

the next forty years of American economic policy.<sup>2</sup> We have him to thank for cheap flights and the Great Lakes Christmas Ale.

Volcker’s monetary policies included high interest rates, peaking at almost 20% in 1981. High inflation and

high unemployment sank Carter’s 1980 reelection, but the final nail in the coffin was his failure to rescue the 53 hostages in the United States embassy in Tehran, Iran. The hostages were held for 444 days and released 15 minutes after Ronald Reagan

was sworn in on January 20th, 1981.<sup>3</sup>

In addition to fixing the American economy, Carter brokered the Camp David Accords, a landmark peace agreement between Egypt and Israel that led to the return of the Sinai Peninsula and a realignment of the Arab world. The Egyptian and Israeli Prime Ministers were jointly awarded the Nobel Peace Prize in 1978. The Camp David Accords laid the foundation for the Oslo Accords in 1993, which provided for limited Palestinian self-governance. In 1985, Carter authored “The Blood of Abraham: Insights into the Middle East” about the Arab-Israeli conflict and the ongoing peace process. He has been criticized

SEE **SANTAVICCA**, page 7



**Editor's Box**

**Philipp Corfman**  
Managing Editor

**Susannah Schroeder**  
Editor-in-Chief

**Cole Sundermann**  
Editor-in-Chief

~ **Contributors** ~

Reece Barnett

Eric Fogle

Sam Santavicca

Joshua E. Brown

Morgan Ann Malone

Luis Tobar

~ **Contact Us** ~

[gavel@csuohio.edu](mailto:gavel@csuohio.edu)

[theclevelandstategavel.org](http://theclevelandstategavel.org)

~ **Office** ~

1801 Euclid Ave,  
LB 62C  
Cleveland, OH 44115

# Examining Law School Exams: A Survey

**Eric Fogle**

Gavel Contributor

With another semester of exams behind us (and another set waiting for us in May), this column surveys several variations of the final exam, analyzing some benefits and pitfalls of each. The categories surveyed include open note vs. closed exams, broad and narrow calls of the question, exams implementing a maximum word count, and multiple choice vs. essay questions.

## Open vs. Closed

Having access to one's notes alleviates test-day anxiety, allowing law students to submit much more refined and polished answers. Being able to focus on application of the law rather than rote memorization is arguably more reflective of legal practice and a more important skill to hone. This advantage of open exams also reveals their biggest drawback: everyone shares the advantages, leading to a much more competitive curve.

More traditional, closed-book exams require a much higher degree of memorization in addition to application skills. It can be argued that in-person exams are more effective because they test not just substantive mastery of the material, but the ability to apply it under pressure, as the profession

may often demand. Perhaps the strongest argument against closed-book exams is memorization is not, by itself, a requisite skill for practicing law. After all, one's notes and research are readily available for review most times.

## Call of the Question:

### Narrow vs. Broad

Beginning with Jump Start, CSU Law students are reminded to read the call of the question first on an exam. The end of a fact pattern might read: "analyze whether A will succeed on a motion to dismiss B's claim for battery" or (\*shudder\*) "analyze all relevant legal issues." Broad and narrow calls of the question serve distinct interests and accomplish distinct goals.

A broad call of the question encourages effective issue spotting, but also allows for wandering answers. A professor may present two key issues for analysis in a single fact pattern, seeking a narrow path of analysis in a maze of possibilities. Broad questions allow professors to keep their hands hidden, requiring students to identify the relevant issues, in addition to applying law to fact and fact to law.

A narrow question helps students understand what is being asked, and reduces the risk of verbose answers riddled with as many memorized rules as possible.

However, narrow calls of the question can trick the overeager reader. An exam taker too prepared to do a full five element analysis of negligence may miss that the question asked only for an analysis of breach.

## Word Count vs. No Word Count

The word count can be quite the equipoise. Where a narrow question is a substantive guardrail against wandering to irrelevant topics, the word count is a procedural one. Like a narrow question, a lower word count enables professors to prioritize addressable issues while eliminating the potential to waste words on unnecessary rule regurgitation. Allocating 800 words to a question allows a professor to establish the adequate length for a response while preventing purposeless point-grabbing.

The biggest flaw with word counts, naturally, is how much they require to be excluded. A semester of doctrines, concepts, and exceptions should arguably not be subject to the confines of a word-limit. Word counts may restrict the analytical depth and nuance for which any given fact pattern calls. But they work.

## Multiple Choice or Essays

Both multiple choice questions and essays have their place on the MBE, so it's

natural that exams might include either, or both.

Multiple choice questions challenge a student to carefully pick from a pool of up to four right answers, but only one "most" right. This challenges a student to balance arguments, identify weaknesses, and select (rather than generate) the best response. An arguable drawback of multiple choice questions is that the answer is on the page. As far as evaluation goes, a lucky guess is identical to flawless process of elimination. A point is a point.

Essays, on the other hand, even those with narrow calls of the question, require a level of recall and rule memorization that is more demanding than multiple choice questions. Where a multiple choice question grades whether the correct listed answer was selected, the IRAC rubric assigns value to issue identification, rule restatements, and adequacy of analysis.

For better or worse, exams are as unique as the professors writing them and vary as widely as the subject matter they cover. Regardless of any exam's given format, the best way to prepare is early.

## The Ghosts of Vegas: Reflections on Turning 40

**Luis Tobar**

Gavel Contributor

Everyone's turning 40. Fine, not everyone, just all my buddies and I decided to get together over the winter break. It's odd because we were just turning 21 yesterday and testing our limits in so many ways. I can still smell the ocean breeze wafting through the Wrightsville beach bars and taste the sudsy amber flavor of an ice cold draft Yuengling. Today, my knees creak just as much as the bed does when I get up in the morning.



Image provided by author

We are back in Las Vegas and the same crew that couldn't lose at the craps table has assembled to try our luck once again. At least I was told we couldn't lose because all I remember is

the sweet, sweet taste of the Taco Bell Cantina at sunrise. I did have a lot more money in my pocket at the beginning of the night, but that could be explained in several ways. "Bobby bottle ser-

vice!" we would yell at each other as the bass boomed and the lights flashed in the club. It was a phrenetic night followed by lounging by the empty pool with bursts of our laughter echoing throughout. Is that what we are here for? To chase some ethereal bygone age? I wonder while sipping a beverage in the familiar hot tub.

Once again laughing uncontrollably, but this time with an excellent steak at a place we've never visited before. The next day I'm throwing axes, dominating at an arcade game and skiing a mountain an hour outside of Vegas. All new experiences.

As I sit at the ski lodge with my drink of choice in hand, it really sinks in. We are not haunted by our past youthful experiences. They are just reference points for our next adventure. Easily resurrected when we are reunited. We are definitely getting older and my slow recovery from a couple of skiing missteps prove that. Those falls and a few epic saves will be something to laugh about on the next trip.



# East Cleveland Mayor Brandon King Suspended: Who Runs the City Now?

**Joshua E. Brown**  
Gavel Contributor

On October 10, 2024, a Cuyahoga County grand jury indicted East Cleveland Mayor Brandon King with twelve criminal charges including theft in office, having an unlawful interest in a public contract, and soliciting or receiving improper compensation. The mayor has pleaded ‘not guilty’ to all charges. King continued in his role as mayor until January 28, 2025, when a panel of three retired judges appointed by the Ohio Supreme Court voted 2-1 to suspend King from his mayoral duties until the case is resolved. It is likely that King will appeal the suspension, although the suspension will continue through the court’s review of any appeal.

In accordance with Section 3.16 of the Ohio Revised Code, Cuyahoga County Probate Court Presiding Judge Anthony Russo will

receive applications for the role of interim mayor through February 14, 2025. The court will then choose an interim mayor from the candidates. The ORC states that when public officials are charged with a felony related to their official duties, the public official may be suspended from their duties until the case is resolved. During this suspension, King will retain the title of mayor and continue to receive a salary.

The suspension creates the question of who will assume the duties of the mayor until an interim mayor is chosen by the court. Section 114 of the East Cleveland city charter provides the order of succession when the mayor is unable to perform their duties. If there is a short-term disability, then the role of acting mayor will be given to the Director of Finance, Director of Law, and then the Director of Public Service. For long-term or permanent vacancy,

the succession follows to “President of Council, Vice President of Council and ranking Council member based upon aggregate years of service....”

Roughly two weeks stand between Mayor King’s suspension and the appointing of interim mayor. If this is to be considered a short-term vacancy, then the duties would fall to the Director of Finance, Latasha Williams, but she is only an Interim Finance Director. Because of this, East Cleveland Law Director Willa Hemmons has claimed to be the successor. The City Council disagrees, with Council President Leti Shabbazz stating that he is the acting mayor, citing the same statute, and that Hemmons cannot be acting mayor due to being a contract employee. Fox 8 News reported Shabbazz stating in an animated press conference: “She [Hemmons] doesn’t have the authority... and her legal

opinion ain’t worth two cents. She is the one who got the mayor indicted on her legal opinion.” One might wonder, who does have the authority to oversee the assumption of the mayor’s duties?

The conflicting claims from the Hemmons and Shabbazz also begs the question: Why is there confusion to the extent that two city officials are simultaneously claiming to hold the responsibilities of mayor? Given that King’s felony indictment was filed over two months prior and the nature of the charges, it would be foreseeable that a suspension was likely. Deciding the interim mayor during this period is a matter of interpreting the city charter, but evidently the charter does not provide a clear enough roadmap to avoid conflict and confusion. Several questions remain to be answered: what distinguishes short-term and long-term vacancies and what checks and balances

are there to ensure a smooth transfer of duties? Residents and onlookers would hope that this situation leads to efforts aimed at clarifying the procedures of the city and preventing similar conflicts from occurring in the future.

This suspension and succession controversy continues narratives of dysfunction in East Cleveland governance. Brandon King was elected as East Cleveland mayor in 2016 following the recall of former mayor Gary Norton Jr. In late 2023, King survived the second recall election of his term and news of contention between the mayor’s office and city council has been persistent throughout his administration. Perhaps new leadership can be a move towards stability, though whoever assumes the duties of mayor will have a full plate with the city having yet to pass a budget for 2025.

## Misny Makes Them ... Play?

**Philipp Corfman**  
Managing Editor

Musicians, load up your gear—Cleveland’s favorite set of raised eyebrows is holding a contest for music to be included in the upcoming Misny Movie.

In case you’ve never been on a road in Cleveland, CSU Law alum Tim Misny (Class of 1980) has been a prominent personal injury lawyer for the past few decades. Like many in that field, Misny turned to advertising to find clients, launching his first TV ads in the 1990s. His breakthrough came in the late 2000s, when he debuted a new slogan: Misny Makes Them Pay. Along with punchy TV and radio spots, Misny blanketed Northeast Ohio with hundreds of billboards, complete with the iconic image of Misny pointing at the viewer, brows furiously askance.

For a while, the only thing particularly special about Misny’s ad campaign was the volume (compare “Misny Makes Them Pay”



Image provided by author

with my native Cincinnati’s “Want More? Call 4!”). But about a half decade ago, Misny decided to shake things up. After all, blasting one slogan for years can have diminishing returns.

So, first came “Tim Misny: You Know What I Do”, a cheeky acknowledgement

that, by now, everyone knew what he did. He then began putting out an assortment of encouraging messages and tidbits of wisdom, from “Stay Strong Ohio!” during the pandemic, to “Please Don’t Drink And Drive!”, to “Do Your Homework, Or Life Will Make You Pay!” Soon

came commemorations of special occasions, including New Year’s billboards, holiday themed billboards with a clip art elf quipping “Santa’s All Right, But Misny Makes Them Pay!”, to “Go Flacco! Make Them Pay!” during the recent Browns season. He also began turning toward the avant-garde, from Misny Mt. Rushmore to Andy Warhol-style Misny Pop Art to, most notoriously, a blown-up image only showing Misny’s eyebrows (intentionally, I have to believe, placed on the interstate to maximize out-of-towners’ unease).

It’s not just billboards and commercials. Misny has also done news appearances, sold merch (my favorite: a clock that says “Time To Make Them Pay!”), held occasional music contests (2013’s winner: “Misny Makes Them Pay” by rap group Y.M.Z.), and built a growing social media following, in part through contests like winning a trip to “Misnyland” (Misny’s

mansion).

So, Misny was primed to jump at the opportunity to make his next big splash. Filmmaker Moe Taylor of Brain Dagger Films, a local psychedelic documentary outfit, recently came up with his trippiest idea yet: a Misny Movie. Taylor’s co-producer Matthew Klesel described the concept to Cleveland Scene as “Millennial meme culture meets 60 Minutes meets ‘Billy On The Street’. And we’re gonna kind of weave it into a Documentary Now type of vibe.”

If you didn’t know anything about Tim Misny except his profession, you might expect him to recoil at the idea of being the subject of a mockumentary. But Misny has long recognized the commercial and personal value of being a meme—after all, his billboards Made Them Pay for Misnyland. So, he eagerly embraced the Misny Movie and promised to use his clout to promote it. He and Brain Dagger Films wanted to turn the Misny



**CORFMAN**

From Page 3

Movie into not only a fun curiosity, but a Cleveland cultural event, proceeds for which would go to the City Mission. That's where the latest music contest came in. A few weeks ago, Misny posted the following to his legions of Facebook followers:

*Myself and BrainDagger Films are holding a musical competition to find songs to play in the soundtrack for the upcoming Misny Movie! Any style or genre is welcome - this is a celebration of Cleveland's music scene and all are invited to enter. The first prize winner will receive 500 dollars, their song will become the official theme song of the movie, as well as a free studio session to record the song professionally. Runner ups will also be featured in the movie so please email moe.taylor.director@braindaggerfilms.com with submissions or questions. This contest will close on April 1st. Turn the*



Image Provided by Author

*volume up to eleven and let's have some FUN!*

After a wave of submissions (apparently mostly of original tunes by local bands), Moe Taylor added the following clarification on braindaggerfilms.com:

*These songs need to incorporate Tim Misny and the city of Cleveland in their lyrics in some way, we are not looking for previously created works of art. We are looking for new content, specifically for this project. This film is a mockumentary*

*and the funnier the songs are the better lol. This contest is not about the prize money so much as it is just a chance to have fun as it is not payment for a product, it's simply an award for being the best of the best. This is going to be a comically epic saga and there will be a scene in the movie for any type of music so LET'S CREATE.*

*We are looking for rock, rap, romantic ballads, country, parody, metal, punk or whatever your form of expression is, just follow the guidelines set forth and let's*

*make 2025 Cleveland's year to show the world who we are as the ragtag collective of vibrant culture that embodies us all.*

On top of the contest, Misny recently announced a free metal music festival for March 29th, 2025 at 5 O'Clock Lounge in Lakewood. The festival will be called, naturally, "Misny Metal Fest", and Misny and Brain Dagger Films will use it to film scenes for the Misny Movie.

Call it tacky, cynical, egomaniacal. All true, to some extent. But I, for one, appreciate Misny getting weird with it. It lets Cleveland be known for something other than being the "Mistake On The Lake" or the "City Whose River Caught On Fire." I'll take the "City With The Weird Eyebrows." And I'm looking forward to hearing your entries for the Misny Music Contest.

**CORFMAN**

From Page 1

thousands have organized through the United Auto Workers (UAW), the American Federation of State, County, and Municipal Employees Cultural Workers United (AFSCME-CWU), and other unions. While it is often difficult to negotiate a first contract, several institutions have successfully inked collective bargaining agreements, including the Whitney Museum of American Art in New York City and the Philadelphia Museum of Art (the latter including a 14% wage increase).

For all the attention that has been rightfully given to Starbucks, Amazon, and UPS workers, it is no less significant that working people now have a voice in running the institutions that help form the backbone of American art and culture. These unions increasingly have the power to make sure that these institutions serve their workers as well as their communities. SEE **SOURCES**, page 6

# Polls! Polls! Polls! A Survey of How Accurate 2024 Polls Actually Were

**Luis Tobar**

Gavel Contributor

The polling industry has been under assault in recent years for "polling misses," but polling on average has been quite accurate. In 2024, some polling firms were almost prophetic in their numbers. Instead of doing a deep dive into the data within the polls (known as "digging into the cross tabs"), a better way to view the overall polling picture is through looking at polling averages across various news sites. These polling averages add all the polls done on a subject, state or national polls for example, and divide them by how many polls are inputted to get a polling average. Now, within those averages there is a standout polling firm in the 2024 field that one should

look to for the exact mood of states and the nation. That standout is a polling firm out of Sao Paulo, Brazil known as Atlas Intel.

Rather than attempting to describe how exact polling was in the 2024 cycle, I bid you to look at the chart below. Atlas Intel effectively told everyone how Election Day was going to look days before results came in. Also notice how the Real Clear Politics (RCP) average, while not perfect, showed a tight race - which turned out to be the case, even with President Trump winning all the swing states.

This chart alone puts to bed the concept of poor polling during this latest presidential cycle with how incredibly close to the end results the RCP average and Atlas Intel

numbers were. However, there were some slight losers in the polling aggregator game. Sites that collect and collate data are known as aggregators or in this case polling aggregators. In creating polling averages, it has become in vogue to "weigh" or favor select pollsters when creating an average. For example, The New York Times, 538 and The Silver Bulletin pick their favorites based on various criteria. The stated position of RCP, on the other hand, is to include as many polls as possible, where the extremes tend to cancel each other out. The difference between the two methodologies was slight but noticeable (see below chart). RCP's averages tended to favor Trump, the eventual winner,

while all the others gave Harris the edge.

The misconception of "bad" polling probably stems from a polling bias in which people only look at polls that reinforce what they want to be true. "Well, all the polling I looked at showed my preferred candidate winning by so many points" is a common trope. They did not see or want to see the other not-so-favorable polling, which is why polling averages give a more honest outlook.

The accuracy shown in polling allows for some very plausible inferences. The first one that comes to mind is that Kamala Harris did indeed reset the race and may have won if the election were held immediately after Biden endorsed her. The

second probable inference is that Joe Biden had a large, growing polling deficit that was insurmountable and might have led to a true Donald J. Trump landslide victory. Past performance does not ensure future polling precision, but we should not be so quick to condemn polling until we take a good look at those pesky boring numbers.

**SEE ONLINE POSTING FOR CHARTS.**

*The Gavel welcomes all readers to reflect on our Paper's former stories within future issues! Former issues of The Gavel can be read at: <https://www.thelevelandstategavel.org>*

**LEARN LAW. LIVE JUSTICE. RELIVE THE PAST.**



# Los Angeles Fires Update: A Month After Devastation, Concerns Linger



Image from Los Angeles Times

**Cole Sundermann**  
Editor-in-Chief

Now that a month has passed since the catastrophic Los Angeles firestorms, a trail of destruction and unanswered questions remain. The Palisades and Eaton fires, two of the deadliest and most destructive wildfires in California's history, have been fully contained.

However, their impact continues throughout the region.

The fires began on January 7 this year and have claimed at least 29 lives and displaced thousands of residents. Over 16,000 structures have been destroyed and over 40,000 acres of land have been affected. As the region tries to recover, investigations

into the causes of the fires have begun. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives is scrutinizing the possibility that an 8-acre blaze, thought to have been extinguished on January 1, may have reignited due to intense winds.

Experts have been pointing to climate change as a

contributing factor given the severity and frequency of these wildfires. Above-normal temperatures and below-normal are expected to persist through February. This means that their remains a risk of another fire to break out in Southern California.

As Los Angeles begins the process of rebuilding, questions regarding the future preparedness and prevention strategies are now at the forefront. The fires have sparked debates about urban planning, forest management, and the need to improve early detection.

With the 2025 fire season outlook predicting continued high-risk conditions, city and state officials are under pressure to implement more robust fire prevention and response measures. The Los Angeles wildfires of 2025 serve as a start reminder of the increased threat posed by climate change

and the urgent need for comprehensive strategies to protect our communities from future disasters.

SEE SOURCES, Page 8



## The Day Basketball Died: Looking Back on the Death of Kobe Bryant Five Years Later

**Reece Barnett**  
Gavel Contributor

On January 26, 2020, the sports world was rocked when it was reported that Kobe Bryant had died in a helicopter crash. I remember exactly where I was when I found out. I was sitting on the couch in my sorority house, procrastinating on homework, when I got a text from my roommate asking me if it was true that Kobe Bryant was dead. Having not seen anything, I asked her who told her that. Her response: TMZ.

After that, it was like a dam broke online. Thousands of reports and tweets poured in, mostly of shock and disbelief, but also mountains of misinformation. All the reports agreed that Kobe Bryant was dead and that he had died in a helicopter crash. The problem was no one could agree on who was with him on the helicopter. TMZ was only reporting Kobe because they had not received confirmation on all the passengers. Meanwhile ABC news was reporting



Image of Kobe and Gianna Bryant at a Lakers game. Photo from NBC News

that Kobe, his wife, and all four of his daughters had been on the helicopter, a wild statement considering the youngest was 6 months old at the time. Many sources were reporting that Rick Fox was dead, to the surprise of everyone, though no one was more surprised than Rick Fox himself, who was very much alive.

While the world was trying (and failing) to figure out if Kobe had been alone

on the helicopter, his wife Vanessa was also looking for answers. Vanessa had been contacted by her eldest daughter Natalia that reports were circulating that Kobe's helicopter had crashed and an assistant had also told her the helicopter had crashed but that there were five survivors. This statement later turned out to be false. When notifications started popping up on her phone reading "RIP Kobe,"

Vanessa then rushed to the airport to try and charter a helicopter herself to take her to the crash site but was denied due to the weather. Unlike the rest of the world, Vanessa knew at least one other passenger had been on that helicopter with Kobe, their 13-year-old daughter, Gianna, affectionally known as Gigi.

Unfortunately, it turned out that there had been 9 people on the helicopter, and no one

had survived. In addition to Kobe and Gianna, the other seven passengers had been Gianna's friend and teammate Alyssa Altobelli and her parents Keri and John Altobelli, friend and teammate Payton Chester and her mother Sarah Chester, coach Christina Mauser, and the pilot, Ara Zobayan.

Tributes went out, honoring Kobe, multiple NBA games that day started the game with an 8 second backcourt violation and a 24 second shot clock violation, a nod to Kobe's jersey numbers 8 and 24. That night, thousands of fans gathered outside Staples to mourn the loss of Kobe and set up a memorial. Over the next week, an estimated 300,000 fans came by Staples leaving basketballs, signs, letters, flags, hats, shoes, and even stuffed animals. The Lakers, alongside Vanessa, hosted a memorial service,

SEE BARNETT, page 8



# TikTok and the Sell-or-Ban Law

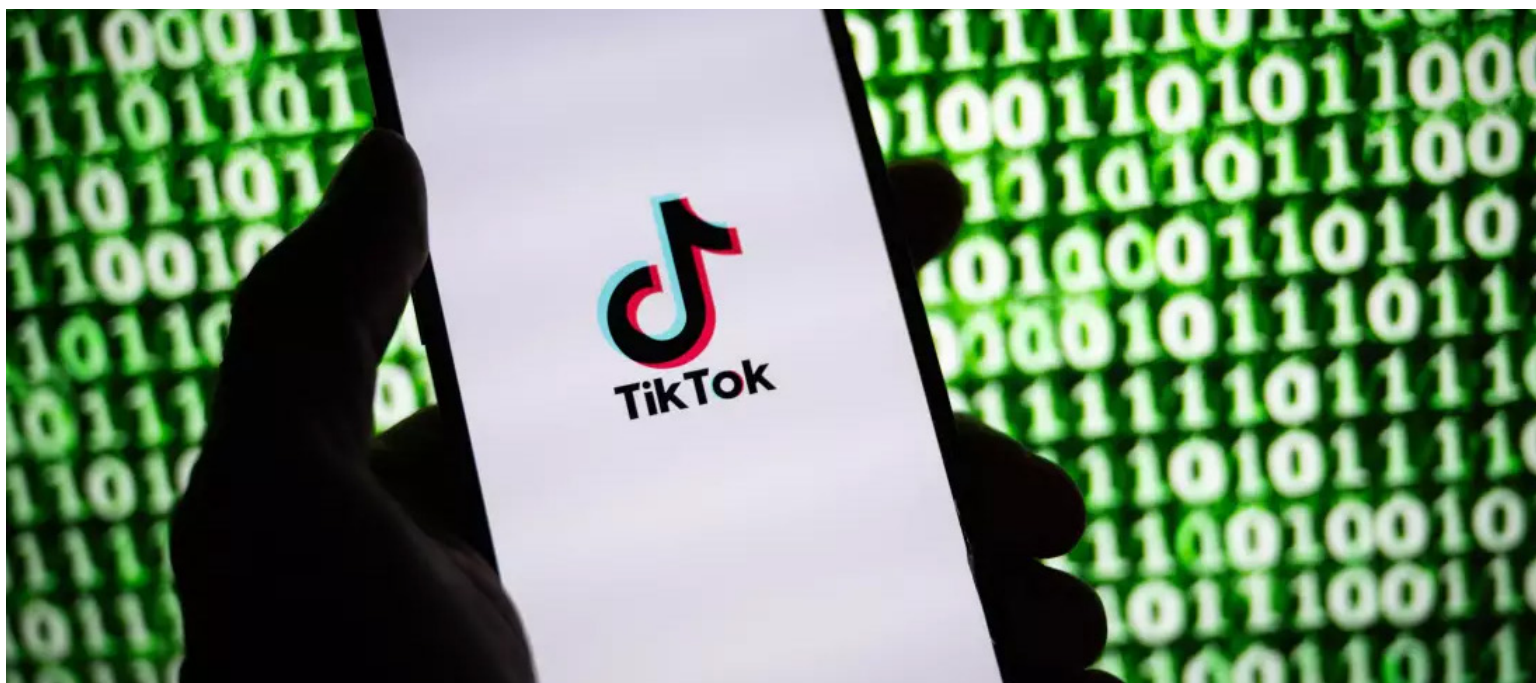


Image from NPR

## Eric Fogle

### Gavel Contributor

Anytime SCOTUS and popular culture meet, the public gets a look into the kaleidoscope of legal reasoning and analysis. Recently, SCOTUS has entered the public eye with its ruling on TikTok, upholding a controversial law requiring either TikTok's sale or its ban. A court decision that could shut down an app used by roughly 170 million Americans is sure to stir some conversation.

Though conversations about TikTok and data privacy date back to at least 2020, the issue rapidly accelerated through the Supreme Court. SCOTUS granted certiorari on December 18th, and issued its opinion on January 17th. Needless to say, that sort of efficiency suggests that the issues of data privacy and national security presented in the opinion were of great interest and importance to the Court.

Using the January 17th per curiam opinion as a guide, this column gives a basic overview of the parties, the federal law at issue, and how SCOTUS applied that law to the facts at hand.

### The Parties

Petitioner, TikTok Inc., is incorporated in California, and by reason of its incorporation in the U.S., it is subject to federal laws. TikTok argues that the law violated its First Amendment rights. The Attorney General represents the U.S. government, arguing for the constitutionality of the federal law at issue.

To clarify, TikTok is a subsidiary of a Chinese-owned

technology company called ByteDance. ByteDance is bound by Chinese laws requiring assistance and cooperation with the Chinese government to ensure that the Chinese government can access and control the data ByteDance holds. This thread connecting TikTok to the Chinese government is the foundation of national security concerns upon which SCOTUS heavily relies.

### The Law at Issue

The law at issue is The Protecting Americans from Foreign Adversary Controlled Applications Act ("the Act"), passed in 2024. In fewer syllables, consider it an "enemy app" ban. The Act prohibits American companies from distributing, maintaining, or updating apps controlled by foreign adversaries, naming TikTok directly in the black letter. It restricts American companies from providing TikTok, whose proprietary algorithm is developed and maintained by ByteDance. Known in shorthand as the Sell-or-Ban law, the Act requires ByteDance to be divested of TikTok (through a sale to Elon Musk or Mark Zuckerberg, for example) or face a ban in the United States.

TikTok Inc. argues that the Act's prohibitions, the divestiture requirement, and TikTok's explicit designation as a foreign adversary-controlled application are unconstitutional under the First Amendment.

### SCOTUS Weighs In

As a threshold matter, the Court assumed without deciding that First Amendment scrutiny applied to the challenged provisions

of the Act. This was a small victory for TikTok because it required SCOTUS to then determine the amount of scrutiny it would apply. The next question is whether the contested provisions of the Act are content-based or content-neutral.

Content-based laws regulate substantive material. The No Protests About Wages Act (this is not real) would regulate based on the substance within (here, wages) and would face strict judicial scrutiny due to its suppression of specific viewpoints. Content-neutral laws, such as the No Protests At Night Act (also not real), do not target specific content, ideas, or viewpoints, and are subject to more forgiving intermediate scrutiny.

SCOTUS found the prohibitions to be content neutral. In its view, the Act's prohibitions are based on a foreign adversary's control over the platform, rather than the content itself. The Act (1) does not target particular speech based on its content; (2) does not regulate speech based on its function; and (3) does not impose a burden by reason of content on TikTok. In other words, TikTok cannot alter or avoid the effects of the Act by changing its speech. For each of these three examples, SCOTUS provides cases where content-based prohibitions were invalidated.

Because the prohibitions are facially content-neutral, they face intermediate judicial scrutiny. A law will survive this level of scrutiny if it advances a governmental interest and is not unnecessarily burdensome in

its furtherance that interest.

Here, says SCOTUS, the compelling governmental interest is national security. Preventing China from collecting data from 170 million Americans is both compelling and content-neutral. Crucial to the Court's decision were the sheer magnitude of TikTok users (and their sensitive data) and, more importantly, China's collection of that data.

Moreover, SCOTUS defends the divestiture requirement, arguing that the law is not an outright ban, which may have required strict scrutiny, but is instead conditional upon the severance of TikTok from its Chinese-controlled parent company.

To SCOTUS, national security is compelling enough to justify the prohibitions of the law, including the divestiture requirement. For these reasons, the Court concluded that the contested provisions of the Act did not violate TikTok Inc.'s First Amendment rights. In the name of data integrity and national security, the law survived intermediate scrutiny and was accordingly upheld.

## SOURCES, From Page 1

Jordan Konell, A Perspective on Increasing Unionization in the Arts and Culture Sector, *The Legal Intelligencer* (Oct. 22, 2023).

Kathleen Cancio, Workers at Ohio cinema house are latest to form a union through AFSCME, *AFSCME Blog* (Nov. 26, 2024), <https://www.afscme.org/blog/workers-at-ohio-cinema-house-are-latest-to-form-a-union-through-afscme>.

Anni Irish, Changing institutional culture from the inside out: why more and more US museum workers are forming unions, *The Art Newspaper* (May 18, 2023), <https://www.theartnewspaper.com/2023/05/18/changing-institutional-culture-from-the-inside-out-why-more-and-more-us-museum-workers-are-forming-unions>.

Anni Irish, Museum Workers Are Tired of Being Paid in Cultural Cachet — So They're Unionizing, *Jacobin* (Aug. 19, 2023), <https://jacobin.com/2023/08/museum-workers-cultural-institutions-pay-conditions-unionization>.

Tyler Walicek, A Unionization Wave Is Reshaping Museums and Cultural Institutions Across the US, *Truthout* (Nov. 27, 2021), <https://truthout.org/articles/a-unionization-wave-is-reshaping-museums-and-cultural-institutions-across-the-us/>.



# 2025 Government Preview: Get In, or Get Out (?)

**Morgan Ann Malone**  
Gavel Contributor

We are in the midst of a small piece of American history in the wake of the recent inauguration of President Donald Trump, in his second term in the Oval Office. For the first time since 2018, there is a “Republican trifecta” in Washington, DC. Along with a GOP president, the Republican party holds the majority in the Senate and the House, plus a majority of governorships.

What, then, does this mean for the country? It means that certain pieces of legislation have a higher likelihood of being repealed, while others stand a better chance at adoption or continuation. For example, the Inflation Reduction Act (IRA) – a federal act designed to reduce the national deficit, lower prescription drug prices, and promote clean energy (Brookings) – has received much pushback from Republican lawmakers ever since its enactment, but their efforts now have a viable shot at longevity thanks to their majority. The GOP largely opposes the IRA, calling it a “partisan climate and regulatory spending spree” that has been “devastating for the American people” (Shelley Moore Capito, Committee on Environment and Public

Works). According to opposing sources, however, the IRA has produced significant profits for the American people – a year after its enactment, the IRA had created over 170,000 jobs in the clean energy sector and slowed inflation rates (American Progress). These varying perspectives on both the purpose and effect of certain pieces of legislation may no longer be a concern of GOP legislators and lawmakers.

Additionally, the second Trump administration has seen several noteworthy plans and proposals that have already made national headlines in just a few days post-inauguration. Among the most recent and (arguably) notorious is President Trump’s plan to significantly alter the landscape of the American federal workforce. This week, Trump has proposed a program for federal worker resignation. Federal workers will be given the option to resign from their jobs yet retain their salaries over several months post-resignation. The execution of this already heavily-criticized plan could lead to a potentially significant reduction in the federal workforce, but the Trump administration states that its purpose is to create a smaller and more efficient

government with less bureaucracy and, therefore, more autonomy and freedom for the American people. Temporary leader of the Department of Government Efficiency (DOGE) (formerly known as the United States Digital Service), Elon Musk, stated on social media platform X that the plan would allow government workers to “take the vacation [they] always wanted, or just watch movies and chill, while receiving [their] full government pay and benefits.” Right after his election, President Trump asserted that this plan would be the “perfect gift to America” in the wake of the 250th anniversary of the Declaration of Independence (New York Times). All federal employees will be eligible for this plan except for members of the military, postal workers, and immigration enforcement officers. Although the plan states that resignation from these jobs is optional, it does not necessarily ensure financial security and protection for these employees upon their leave.

The new administration’s plans could have a profound effect on the Cleveland community as well. The attempted freezing of federal loans – that has since been suspended by a judge – while the Trump administration

figures out which of the relevant loans or grants align with their objectives is top of mind for Cleveland State students as they grapple with the realities of their financial situations. Over 69% of all Cleveland State students – including law students – take out federal loans to either supplement their education or provide for it completely (Prep Scholar). The new administration initially plans to freeze these loans for some time while they figure out if these loans – and any other related grants – align with their policies and objectives.

What are those policies and objectives, exactly? According to the Trump Administration’s official website, the president’s goals are to “drain the swamp” of “overpaid DEI activists”; “make America affordable and energy dominant again” by withdrawing from the Paris Climate Accord; and “make America safe again” by cracking down on illegal immigration and strengthening border security. These policies, says the White House, are not only undoubtedly in alignment with key tenets of conservative values, including a decentralized, anti-bureaucratic, and anti-hegemonic government – they are ultimately the defining principles of our country’s founding. Without

them, the idea of America being a free nation would arguably mean nothing.

Many, however, are questioning the effects of these policies as well as the motives behind them. The president’s recent statements about the tragic, deadly plane crash near Ronald Reagan National Airport on January 29th focused on the dangers of “DEI hiring practices”, while pushing sympathy to families of lost loved ones to the background (AP News). Additionally, at a recent confirmation hearing, controversial Secretary of Health and Human Services nominee Robert F. Kennedy Jr. stated that blacks and whites needed different vaccine schedules because “[blacks’] immune systems are [sic] better than ours”, harkening back to antiquated ideologies stemming from the health industry’s often tumultuous relationship with race throughout its history (NPR).

What does this mean for Americans? Is America heading toward a long-awaited era of unapologetic, progress-driven nationalism, or are we being hurled back into a bygone era full of the ghosts of policies’ past? Does the agenda of the Republican trifecta celebrate the principle of “America First”, or will it lead to “America Left Behind”?

## SANTAVICCA

From Page 1

criticized for describing the Israeli occupation of Palestinian territories as “worse instances of apartheid, or apartheid, than we witnessed even in South Africa.”<sup>4</sup>

In the Western hemisphere, Carter is also known for returning the Panama Canal. He signed a treaty with Omar Torrijos, the de facto leader of Panama, in 1977 that returned the Canal on December 31st, 1999.<sup>5</sup>

Prior to his political career, Carter was a naval officer, graduating from the United States Naval Academy on June 5th, 1946, with a Bachelor of Science and was commissioned as an ensign. He married Rosalynn Smith the next month. While a naval officer, Carter served aboard submarines in both the Atlantic and Pacific

fleets, earning multiple service medals.<sup>6</sup>

Carter volunteered for the nascent nuclear submarine program in 1952 and was sent to study at the Atomic Energy Commission. Later that year, he was sent to Canada to lead a maintenance crew in shutting down a reactor that had begun to melt down. Carter was lowered into the reactor for 90 seconds just to turn a single screw. His experience there helped him handle the Three Mile Island meltdown in 1979 and shaped his disdain for nuclear weapons.<sup>7</sup>

Carter was critical of the Reagan, W. Bush, and Obama administrations for their use of force in resolving foreign conflicts. As a self-described “outsider,” he had limited friendships with other presidents. One

notable exception, however, was Carter’s friendship with Gerald Ford, the Republican he defeated in the 1976 election. Their friendship began with during the flight to the state funeral of Anwar Sadat in Egypt in 1981 and ended with Carter’s eulogy at Ford’s funeral in 2007.<sup>8</sup>

After founding the Carter Center in 1982, Carter toured the world as an advocate for peace and human rights. He visited Egypt, North Korea, Russia, South Africa, China, Palestine and other war-torn nations.<sup>9</sup> In 2002, Carter was awarded the Nobel Peace Prize for “his decades of untiring effort to find peaceful solutions to international conflicts, to advance democracy and human rights, and to promote economic and social development.”<sup>10</sup>

One of Carter’s greatest accomplishments was the near eradication of Guinea worm disease. When he took on the project in 1986, there were an estimated 3.6 million cases worldwide. Speaking in 2015, Carter said “I would like to see Guinea worm completely eradicated before I die.”<sup>11</sup> There were 11 cases in 2024.

A staunch Baptist, Carter sought to give back however he could. He began volunteering with Habitat for Humanity in 1984 and only stopped after hip surgery in 2019.<sup>12</sup> Additionally, Carter taught Sunday School twice a month at Maranatha Baptist Church in his hometown of Plains, Georgia, up until the COVID-19 pandemic.<sup>13</sup>

President Joe Biden delivered Carter’s eulogy during his state funeral on

January 9th, 2025. Other eulogies included Ford’s, delivered by his son Steven, and Carter’s Vice President, Walter Mondale’s, delivered by his son, Ted. Jimmy Carter was preceded in death by his three siblings, and his beloved wife of more than 77 years, Rosalynn.<sup>14 15</sup>

“I’d like to be remembered as a champion of peace and human rights. Those are the two things I’ve found as a kind of guide for my life. I’ve done the best I could with those, not always successful, of course. I would hope the American people would see that I tried to do what was best for our country every day I was in office.” Jimmy Carter, 2014 16





Image from Wikipedia

## BARNETT From Page 5

honoring the memory of Kobe and Gianna. The WNBA made Gianna, Alyssa, and Payton their 2020 honorary draftees. And UConn, Gianna's top choice for college, honored her with a number 2 jersey (Gigi's jersey number) and floral arrangement perched on the UConn Bench.

The news came out that the passengers had been on their way to a basketball tournament at Kobe's Mamba Academy in Thousand Oaks and, as most fans know, helicopter was Kobe's preferred method of travel. He had constantly taken a helicopter to the Staples Center when he played for the Lakers, since he lived over an hour away in a different county and LA traffic is constantly a nightmare. After it was announced that there was no black box, everyone believed that other than a recording from air traffic control, we weren't going to hear much else. Then the news broke that there were two lawsuits. The first, against the helicopter company and the estate of the pilot, was expected. The second, however, was a surprise.

Several months after the crash news broke that Vanessa Bryant (later joined by Chris Chester, Payton's dad) was suing Los Angeles County (the Altobelli and Mauser families later filed their own separate lawsuits). It turns out that while at the site, as many as eight deputies had taken photos, seen photos, or shared photos of the bodies on their cell phones and then some of them proceeded to show the photos to normal citizens, bragging that they had pho-

would never have to see those photos. For anyone who has read Kobe's autopsy report, it is clear as day why no one should ever see those photos, and it is quite disturbing that anyone would think it was okay to take the photos (especially in the course of duty) let alone show them to others.

In addition to having to deal with LA County, Vanessa was also trying to continue to raise her daughters without her husband and their sister. She and eldest daughter Natalia started by simply keeping their memory alive by posting pictures and videos on their (now public) Instagram accounts of the two as well as making sure the younger two, Bianka (at the time 3) and Capri (at the time 6 months) knew how much Kobe and Gigi loved them and how special they were. Then Vanessa took it a step further.

In an incredible show of strength, Vanessa decided to keep Kobe and Gigi's legacy alive by establishing the Mamba and Mambacita Foundation. On Gigi's 15th birthday, Vanessa teamed up with female owned brand DanniJo to create two limited edition MAMBACITA X DANNIJO sweat sets. Due to the popularity, they then brought it back in honor of Gigi's 16th birthday in addition to Nike Kobe VI "Sweet Sixteen" shoes. For Gigi's 17th birthday, it was a mixture of another shoe in a beautiful box that said "Mambacita" and had the number 2 with wings and a halo underneath it as well as a jersey and keychain. Finally, this past year, on Gigi's 18th birthday she teamed up with Nike again to release the Kobe 8 Proto Mambacita sneakers (only available via

the Nike SNKRS app) along with Gigi's jersey in black and white, and a Mambacita's 18th Birthday Capsule Collection. It wasn't only on Gigi's birthday that merchandise was dropped. For this past Father's Day she dropped the Kobe 4 Proto "Girl Dad" and for his 46th birthday she dropped an LA Royal Collection. And every time you order an item, in addition, you receive a red bracelet that says #PlayGigiWay, and all the money goes to the foundation.

In the five years since Kobe and Gigi's passing a lot has happened. Kobe was inducted into the Basketball Hall of Fame (Natalia accepted alongside her mother on his behalf), various murals have gone up around the country, the Lakers have unveiled multiple statues in Kobe and Gigi's honor and more. Life went on. Natalia graduated high school and went to college, Alyssa Altobelli's sister, Alexis, got an internship at a top sports agency, Christina Mauser's husband, Matt, went on America's Got Talent, Capri celebrated her fifth birthday, and most recently Bianka celebrated her eighth. The world continues spinning, but we have not forgotten Kobe, Gigi, Alyssa, Keri, John, Sarah, Payton, Christina, and Ara. Their memories and legacies continue to live on five years later. #MambaForever

**Editor's Note:**  
The Gavel is proud to publish all opinions at CSU College of Law. Disagree or have something to add? Submit your own article for publication or comment online!

**SOURCES,**  
From Pages 1 and 7

1. <https://www.theguardian.com/us-news/2024/dec/30/jimmy-carter-arts>
2. <https://www.foxbusiness.com/politics/former-president-jimmy-carter-transformed-airline-industry>
3. <https://history.state.gov/departmenthistory/short-history/iraniancrises>
4. <https://www.haaretz.com/2006-12-11/ty-article/jimmy-carter-israels-apartheid-policies-worse-than-south-africas/0000017f-db7c-d3a5-af7f-fbfea0530000>
5. <https://achievement.org/achiever/jimmy-carter/#interview>
6. <https://achievement.org/achiever/jimmy-carter/#interview>
7. [https://www.cartercenter.org/about/experts/jimmy\\_carter.html](https://www.cartercenter.org/about/experts/jimmy_carter.html)
8. <https://www.pbs.org/newshour/politics/jimmy-carter-was-an-outlier-with-other-former-presidents-but-formed-a-friendship-for-the-ages-with-gerald-ford>
9. [https://www.cartercenter.org/news/trip\\_reports/index.html](https://www.cartercenter.org/news/trip_reports/index.html)
10. <https://www.nobelprize.org/prizes/peace/2002/press-release/>
11. <https://www.npr.org/sections/goatsandsoda/2023/02/23/1158358366/jimmy-carter-took-on-the-awful-guinea-worm-when-no-one-else-would-and-he-triumph>
12. <https://www.habitat.org/newsroom/2024/habitat-humanity-mourns-death-former-us-president-jimmy-carter>
13. <https://apnews.com/article/jimmy-carter-plains-georgia-maranatha-sunday-school-a1a692079be175cf2e882176fc343344>
14. <https://www.nytimes.com/1988/09/26/obituaries/billy-carter-dies-of-cancer-at-51-troubled-brother-of-a-president.html>
15. <https://www.cartercenter.org/news/pr/2023/statement-rosalynn-carter-111923.html>
16. <https://www.cnn.com/2024/12/29/jimmy-carter-quotes-i-could-have-wiped-iran-off-the-map.html>

**SOURCES,**  
From Page 5

<https://www.cnn.com/2025/02/06/us/southern-california-edison-hudson-hurst-fire/index.html>

<https://www.nytimes.com/2025/02/01/us/los-angeles-fire-contained.html>

<https://www.latimes.com/california/story/2025-02-07/1-a-firestorms-vital-questions>

THE  
**GAVEL**

OPEN TO ALL  
IN THE CSU  
COMMUNITY  
ALUMNI, STAFF, STUDENTS,  
CLEVELAND LAWYERS,  
ANYONE

SUBMIT YOUR STORY  
TODAY

THE  
**GAVEL**

The  
Cleveland  
State  
Gavel.org

AVAILABLE ONLINE  
FREE!