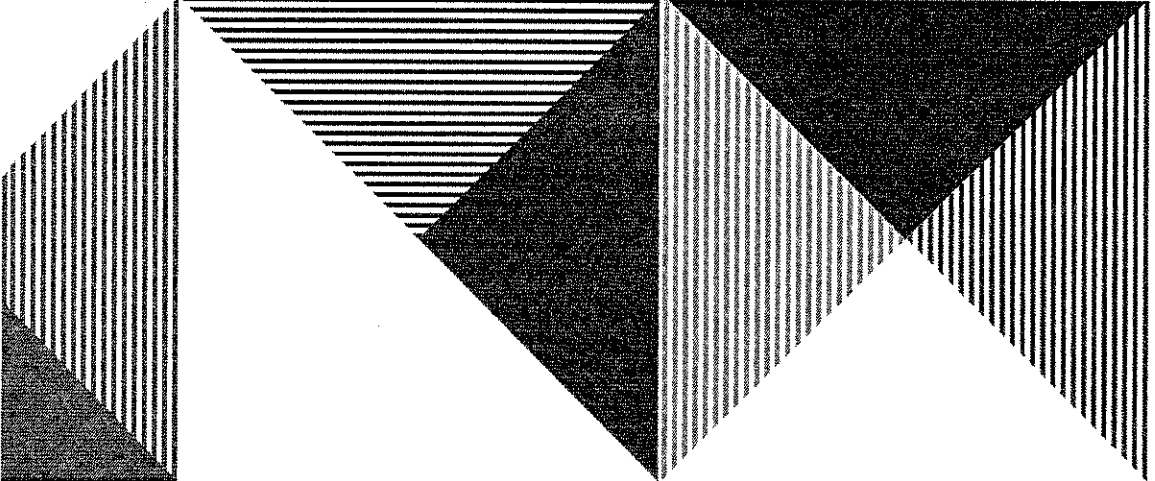




TEAM VI AND THE SUPREMES: TAKE 5

April 15, 2025

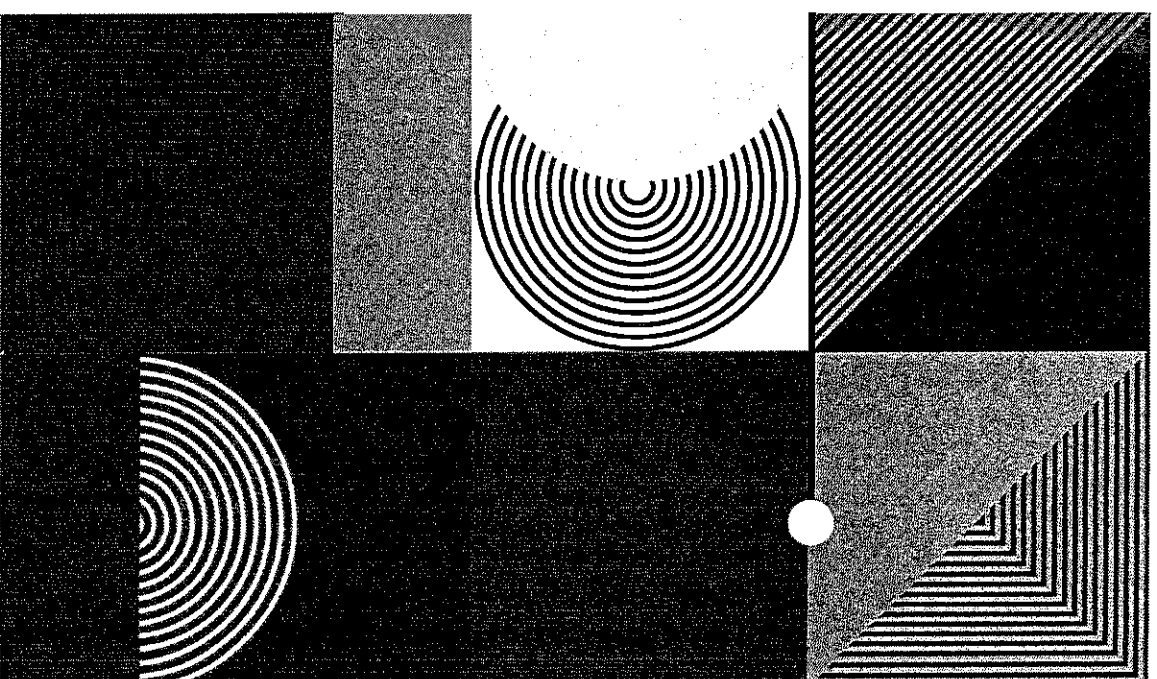


TEAM MEMBERS

- Judge Edward N. Cahn
- William Bried
- Robert Knauer
- Maureen Jordan
- Michael Daigle
- Mark Crossley
- Eric Harakal
- Josh Haney

AGENDA

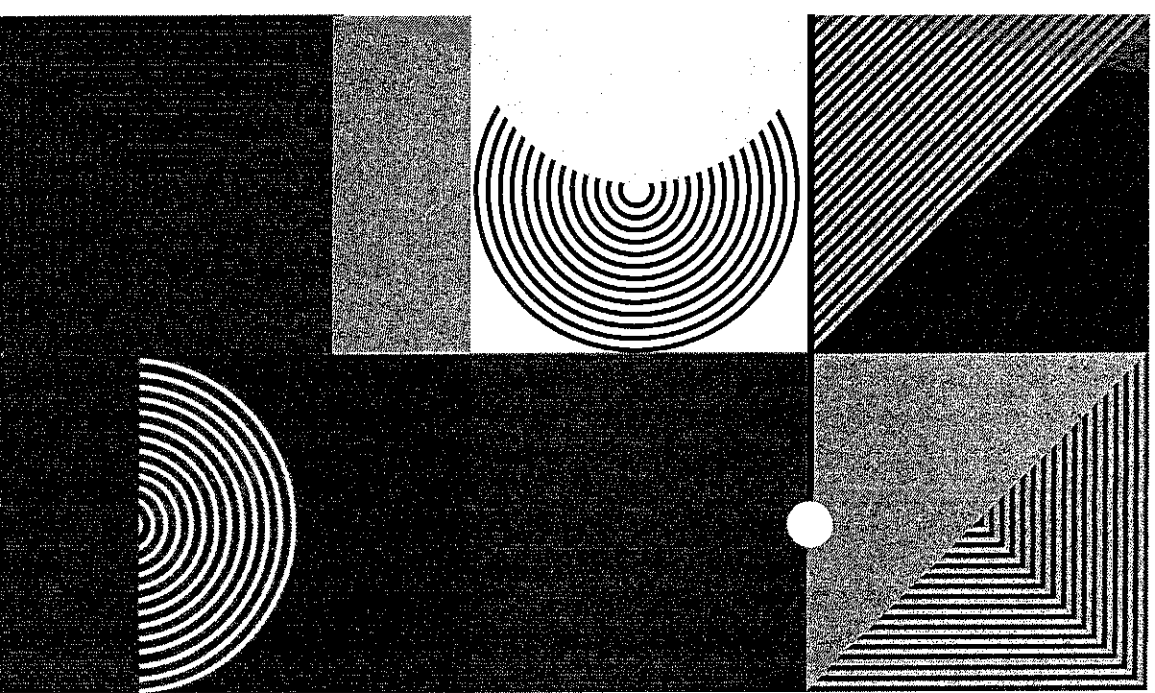
- Judge Cahn- Trump v. Barbara- birthright citizenship
- Mike Daigle- Learning Resources, Inc. v. Trump-tariff case
- Josh Haney-Little v. Hecox- Biological Men in Women's Sports
- Bob Knauer- Chatrie v. US- geofence case regarding the 4th Amendment
- Eric Harakal-Wolford v. Lopez and Lara v. Comm. Of PA- 2nd Amendment cases
- Bill Bried- Commonwealth of PA v. Lee –life sentence in felony murder without culpability
- Mark Crossley-Yoder v. McCarthy Construction- upheld statutory employer defense



TRUMP V. BARBARA

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



The Parties

- Idaho's Fairness in Women's Sports Act (the "Act"), Idaho Code § 33-6201, flatly bans transgender women from participating in womens sports.
 - Dispute process involves an invasive "sex verification" process.
 - The Act does not affect mens sports at all.
 - Enforcement mechanism through private cause of action against violating institutions.
- Lidsey Hecox is a transgender woman athlete who lives in Idaho and attends Boise State University who intends to try out for the BSU women's cross-country team in fall 2020, and for the women's track team in spring 2021. Under NCAA Rules, Hecox would be allowed to compete.
- Complaint
 - Equal Protection - Ban
 - Substantive Due Process - Verification
 - 4th Amendment - Verification
 - Title IX - Ban & Verification
 - Due Process - Lack of Fair Notice



District Court

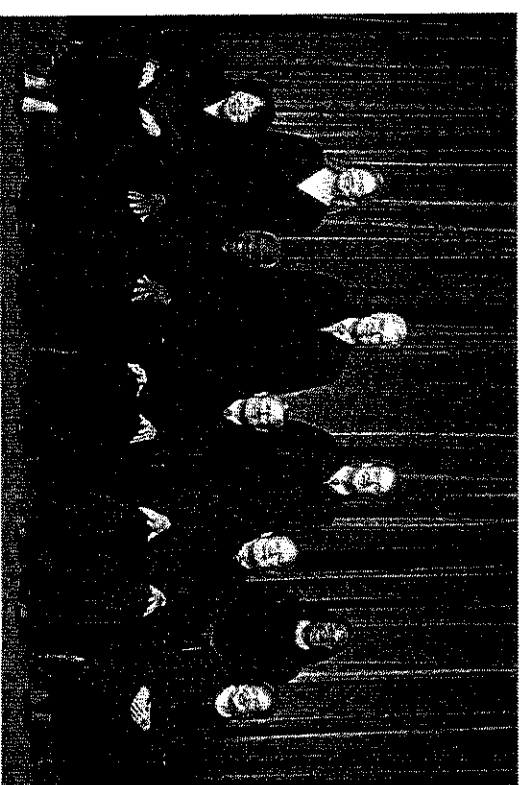
- **Issues:**
 - Intervention: Individuals who had poor experiences competing against transgender athletes
 - Motion to Dismiss: State challenged standing and ripeness of Hecox on
 - Preliminary Injunction: Whether the court should enjoin the State of Idaho from enforcing a newly enacted law which precludes transgender female athletes from participating on women's sports.
- **Preliminary Objection**
 - 1) Success on Merits: Equal Protection - Intermediate or "Heightened" Scrutiny - classification by sex must serve important governmental objectives and must be substantially related to achievement of those objectives.
 - 2) Irreparable Harm Absent a Preliminary Injunction
 - 3) Balance of Public and Private Interests

Court of Appeals for the 9th Circuit

- Issue: Whether the federal district court for the District of Idaho abused its discretion in August 2020 when it preliminarily enjoined the Act, holding that it likely violated the Equal Protection Clause of the Fourteenth Amendment.
- Holding: District Courts Order was Affirmed in Part and Vacated in Part.
 - Scope of Injunction - Labrador v. Poe, 144 S. Ct. 921 (2024)

Supreme Court

- June 30, 2025 - Supreme Court granted Idaho's request to review the lower courts' decision
 - Amicus Briefs in Support of Respondents
- Issues
 - Mootness
 - Equal Protection



YODER vs. MCCARTHY CONSTRUCTION, INC.

The case of the Statutory Employer

Supreme Court No.: 345 A.3d 668

WHAT IS A STATUTORY EMPLOYER?

A statutory employer is a legal designation, particularly common in Pennsylvania construction law, where a general contractor is deemed the employer of a subcontractor's worker for workers' compensation purposes. This relationship makes the general contractor liable for benefits if the subcontractor lacks coverage, while granting the general contractor immunity from negligence lawsuits (tort immunity).

CRITICAL FACTS

- McCarthy was not the direct employer of Jason Yoder
 - McCarthy was the General Contractor in charge of the library project where Mr. Yoder was injured.
 - Mr. Yoder's direct employer was RRR Contractors, Inc.
 - RRR Construction was hired to put the roof on the library
- Mr. Yoder was asked by his foreman Dave Adams of RRR Construction to deliver foam insulation to workers on the roof
 - In the process of delivering the foam insulation Mr. Yoder stepped in a hole on the roof that was unmarked and uncovered, fell through the hole and suffered serious injuries.

CRITICAL FACTS (CON'T)

- Mr. Yoder's Workers' Compensation Benefits were paid by RRR Contractors' insurance.
- Case proceeded to a full jury trial
- Following Mr. Yoder's case in chief, McCarthy moved for a non-suit based on the statutory employer/ employee immunity
 - Argued immunity from tort liability under the Workers' Compensation Act.
 - Trial Court denied the Motion for Nonsuit
 - Trial Court refused to charge the Jury on the statutory employer immunity
- Jury found McCarthy Construction negligent and returned a unanimous verdict in favor of Mr. Yoder in the amount of \$5 Million.

CRITICAL FACTS (CON'T)

- McCarthy filed Post-Trial Motions and moved for a judgment notwithstanding the verdict (JNOV), which was also denied by the Philadelphia Trial Court.
 - Trial Court also denied the remaining Post-Trial Motions
 - Found that McCarthy waived the Statutory Employer Immunity by not pleading it in its' New Matter
- McCarthy filed an Appeal to the Pennsylvania Superior Court.

ISSUES RAISED ON APPEAL TO SUPERIOR COURT

- Four issues raised for the Superior Court Review:
 - (1) Whether JNOV is required because McCarthy was clearly entitled to statutory employer immunity?
 - (2) In the alternative, whether the Superior Court should order a new trial at which the statutory employer immunity will be litigated?
 - Issue of Statutory Employer was never litigated in the Trial Court.
 - Trial Court refused to hear the issue because it was not raised as an affirmative defense and therefore, the Court concluded it was waived.
 - (3) Whether a new trial is required because the trial court erroneously precluded highly relevant video surveillance?
 - (4) Whether remand was required to recalculated delay damages?

Superior Court Opinion – 291 A.3d 1

- Contractor (McCarthy) met all five elements of the test used to establish the statutory employer relationship.
 - 5 Elements/ 5 Prong Test (McDonald v. Levinson Steel Co.) (1930):
 - (1) An employer who is under contract with an owner or one in position of an owner;
 - 3 Parts: (1) an employer, (2) a contract and (3) an owner.
 - (2) Premises occupied by or under the control of such employer;
 - (3) A subcontract is made by such employer;
 - (4) Part of the employer's regular business entrusted to such subcontractor; and,
 - (5) An employee of such subcontractor.

STATUTORY EMPLOYER SITUATION

- Often found in the construction industry
 - Property owner hires a general contractor
 - General contractor hires a subcontractor to do specialized work on the site
 - Employee of the subcontractor is injured in the course of employment
 - General contractor meets all 5 elements of the test
 - Test found in McDonald v. Levinson Steel (1930 case)
 - General contractor qualifies as the statutory employer of the subcontractor's employee
 - Immune from suit in tort law by that employee under the Workers' Compensation Act
- Ensures that there is adequate workers' compensation coverage.**

Judgment Notwithstanding the Verdict (JNOV)

- De Novo Review
- Two (2) bases upon which a judgment notwithstanding the verdict or JNOV can be entered:
 - (1) Movement is entitled to a judgment as a matter of law; or
 - (2) Evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant.

Subject Matter Jurisdiction

- Jurisdiction is a matter of substantive law
- The Workers' Compensation Act deprives the common pleas courts of jurisdiction.
- Applies to common law actions in tort for negligence against the employer.
- Is not an affirmative defense which may be waived if not timely plead.
- As long as the proceedings continue, even throughout the appellate process, Subject Matter Jurisdiction may be addressed.

Judicial Estoppel

- Purpose of Judicial Estoppel is to preserve the integrity of the Courts.
- As a general rule, a party to an action is estopped from assuming a position inconsistent with an assertion in a previous action.
- Includes admissions made in the pleadings, stipulations, etc. and cannot be later contradicted by the party who made them.
- In this case, Plaintiff was judicially estopped from claiming he was not an employee of the subcontractor when he signed a Compromise and Release Agreement wherein he alleged he did.

Superior Court Opinion – HOLDINGS

- Holding of the Superior Court:
 - (1) Because a contractor met all five elements of the test used to establish the employer/ employee relationship, the employer was immune from suit for negligence / Tort Liability under the WCA.
 - (2) Employee was judicially estopped from claiming he was an independent contractor because he represented in a C&R that he was an employee of the subcontractor and not an independent contractor
 - (3) The contractor both occupied and controlled the job site and also communicated with the subcontractors to ensure the project completion and had the responsibility for safety of the job site, which satisfied the elements of the five (5) prong test.

Superior Court Opinion – HOLDINGS (Con't)

- Judgment of the Philadelphia Trial Court reversed.
- Holding of the Trial Court was vacated and remanded
- Superior Court determined that General Contractor, McCarthy, satisfied each part of the McDonald test.
 - Constrained to conclude that McCarthy is Yoder's statutory employer
 - As statutory employer is immune from suit under the PA WCA
- Appealed to the Pennsylvania Supreme Court
- Pennsylvania Supreme Court had 4 Amicus Curiae Briefs
- Amicus Curiae means a friend of the court“ and is a person or organization, not party to a case, who submits a brief to provide information, expertise, or insight to influence a court's decision.

Appeal To The Pennsylvania Supreme Court

- Supreme Court looked at Section 302 of the Pennsylvania Workers' Compensation Act to hold that the General Contractor who hires a Subcontractor to perform work on a jobsite is secondarily liable to the injured employee of the subcontractor for purposes of the Act.
 - Act found at 77 P.S. § 302(b).
- General Contractor remains liable under the Pennsylvania Workers' Compensation Act if the Subcontractor fails to make a payment.
 - Subcontractor is the one primarily liable
- Since General Contractor remains liable under the Pennsylvania WCA, they are also afforded tort immunity as provided for in the Act.
- Immunity applies to General Contractor even if they did not make any payments to the employee of the Subcontractor.

SUPREME COURT ISSUES PRESENTED

- Yoder appeal to the PA Supreme Court – 3 Issues Presented:
- (1) Should the Court overrule the prior precedent and hold that the General Assembly's 1974 Amendments to the WCA only permitted the statutory employer status to general contractor that actually paid benefits to an injured employee of the Subcontractor? See *Former vs. Shandon, Inc.*
- (2) Should the Court overrule prior precedent allowing for a finding of a statutory employer where the general contractor did not pay workers' compensation benefits to the employee of the subcontractor? See *LaFlair v. Gulf Creek Industrial Park.*

SUPREME COURT ISSUES PRESENTED

- (3) Did the Superior Court fail to properly apply the facts that must be strictly established under McDonald vs. Levinson Steel Co (5 prong test) for a general contractor to qualify for a statutory employer?
 - If the facts were not properly applied, would need a retrial at which the jury would resolve the disputed factual issues concerning whether McCarthy qualifies as Yoder's Statutory Employer.

MATERIAL FACTS CONSIDERED

- McCarthy contracted with the Borough of Norwood to remove and replace the Library's roof.
- McCarthy subcontracted the roofing work to RRR.
- Yoder was an employee of RRR.
- Yoder fell through an uncovered hole in the roof and sustained severe injuries.
- Yoder received workers' compensation benefits from RRR through a Compromise and Release Agreement.
- Yoder sued McCarthy for negligence.
- The trial court precluded McCarthy from presenting its statutory employer defense at trial.

Workers' Compensation Act Section 302(b)

- Any employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of such employer's regular business entrusted to that employe or contractor, shall be liable for the payment of compensation to such laborer or assistant unless such hiring employe or contractor, if primarily liable for the payment of such compensation, has secured the payment thereof as provided for in this act. Any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefor.

KEY ASPECTS OF SECTION 302

- **Statutory Employer Liability (302(a) & (b)):** A contractor who subcontracts work (specifically in construction, excavation, or timber) is liable for workers' compensation benefits to the subcontractor's employees if the subcontractor is uninsured.
- **Immunity:** A general contractor deemed a "statutory employer" is immune from common law negligence lawsuits for injuries, even if the subcontractor actually paid the benefits.
- **Five-Part Test:** To qualify as a statutory employer, the contractor must:
 - (1) contract with the owner,
 - (2) control the premises,
 - (3) have a subcontract,
 - (4) entrust part of their regular business to the subcontractor,
 - and (5) have the employee injured on the premises.

Key Issues of Section 302 (Con't)

- **Auxiliary Police:** Section 302 provides specific wage calculation rules for injured auxiliary police, including self-employment earnings.
- **Presumption of Coverage:** Under Section 302(a), employers and employees are presumed to have accepted the Act's coverage unless they explicitly opt-out, which is rarely done.
- **Waiver of Immunity:** the statutory employer defense is "jurisdictional" and cannot be waived, maintaining strong protections for general contractors.

PA SUPREME COURT HOLDINGS

- Court declined to overrule Fonner v. Shandon, Inc.
 - Reaffirmed that McCarty, as a potential statutory employer, remains entitled to immunity from Yoder's negligence claim
 - Even though McCarthy was not required to pay workers' compensation benefits
 - Subcontractor fulfilled its obligation to provide and pay workers' compensation benefits
- Court declined to overrule LaFlar v. Gulf Creek Industrial Park #2
 - Reaffirmed that McCarthy did not waive its' statutory employer defense for failing to plead it timely
 - Challenges to the Court's subject matter jurisdiction can be raised at any time, including Sua Sponte by the Court.

Stare Decisis

- Afforded special force in the area of statutory interpretation
- Courts adhere to a more strict application of the doctrine in the context of statutory interpretation
- To overrule precedent, Courts consider:
 - (1) Workability
 - (2) Antiquity of the Precedent
 - (3) Reliance interests at stake
 - (4) Whether the decision was well-reasoned.
 - (5) Special justification other than the precedent was wrongly decided

Stare Decisis (Con't)

- Principle as old as Common Law
- Derived from the Latin maxim: *stare decisis et non quieta movere*
 - Means: to stand by the thing decided and not disturb the claim.
- Without the commitment to precedent, the system of jurisprudence would lack stability
- Protects interests of those who have taken action in reliance on a past decision
- Reduces incentives for challenging settled precedents
- Saving the parties and Courts the expense of endless relitigation

Stare Decisis (Con't)

- For the sake of certainty that a conclusion reached in one case should be applied to those cases which follow that have substantially the same facts even though the parties are different.
- Is not an inexorable command to be followed blindly when such adherence leads to perpetuating error.
- The Legislature can prospectively amend the statute if it disagrees with a court's interpretation
- Once a statutory construction is made and followed, should never be altered upon the changed views of new personnel of the court.

CONCLUSION OF THE SUPREME COURT

- Plaintiff failed to advance special justification to overrule decades old precedent.
- Must reverse the Superior Court decision remanding the case to the trial court to enter JNOV in McCarthy's favor based on the McDonald test.
 - Plaintiff only challenged certain findings of the trial court
- JNOV can only be entered on two bases
 - (1) where the movant is entitled to judgment as a matter of law; and/or
 - (2) that the evidence as such that no two reasonable minds could disagree with the outcome.
- Supreme Court not sure if the trial court's denial of JNOV was due to insufficient, incompetent evidence to sustain the verdict

CONCLUSION OF THE SUPREME COURT (Continued)

- Superior Court was not in a position to evaluate the case for JNOV
 - Trial Court was in the best position to determine if JNOV was appropriate
 - While appellate court may disagree with a verdict, it may not grant a motion for JNOV simply because it would have come to a different result.
 - Verdict must stand unless there is no reasonable basis for it.
- Also vacate the trial court's order denying McCarthy's post-trial motion requesting JNOV and entering judgment in Plaintiff's favor
 - Remand to the Trial Court for further proceedings
 - Trial Court to apply 5 prong McDonald Test to assess whether McCarthy was a Statutory Employer entitled to protections under the PA Workers' Compensation Act.