

## Supreme Court 2023-2024: *Religious Liberty Cases to Watch*

### PETITION FOR CERT GRANTED

#### ***Loper Bright Enterprises v. Raimondo* (No. 22-451): How much power do federal agencies have?**

The framework of American government was built on the idea that different branches of government should check and balance each other. However, in its 1984 ruling *Chevron v. National Resources Defense Council*, the Supreme Court gave significant power to unelected lower-level executive branch officials. When they make rules, courts have to defer to their interpretations of law. For years, agency deference has empowered hostile federal government officials to target religious believers—like Becket’s client the Little Sisters of the Poor—for special disfavor. On May 1, 2023, the Court agreed to review *Loper Bright v. Raimondo*, which presents the Court with an opportunity to revisit *Chevron* and protect religious groups like the Little Sisters of the Poor. Clement & Murphy PLLC represents Loper Bright.

**Status:** Becket filed an amicus brief on behalf of the Little Sisters of the Poor on August 24, 2023. Oral argument is expected in late fall.

### PETITIONS SEEKING SUPREME COURT REVIEW

#### ***Vitagliano v. County of Westchester* (No. 23-74): Are pro-life sidewalk counselors protected by the First Amendment?**

Motivated by her Catholic faith and experience working with special-needs children, Debra Vitagliano offers compassionate, face-to-face support to women considering abortion. Debra desires to help these women in the most critical moment—when they are approaching the abortion clinic. But last year, Westchester County, New York, passed a law restricting offers of information and help to women on public sidewalks outside abortion clinics. The law—which is modeled on one upheld by the Supreme Court in *Hill v. Colorado*—established a 100-foot zone around abortion clinics—including public sidewalks—preventing anyone from approaching within eight feet of another person in that zone unless given explicit consent. Bans on sidewalk counseling deprive women of a final opportunity to learn about additional resources before making a life-altering choice. Represented by Becket, Debra is asking the Supreme Court to get rid of its *Hill* decision.

**Status:** Becket filed a petition for writ of certiorari at the Supreme Court on July 21, 2023.



***Tingley v. Ferguson* (No. 22-942): Does the First Amendment protect therapists counseling about sex and gender identity?**

Brian Tingley is a licensed Christian therapist who helps clients with various issues, including counseling related to their sexuality and gender identity. He serves clients who seek out his faith-based perspective on these issues. Tingley is challenging a Washington state law that bans such counseling unless it affirms a client's gender transition or same-sex relationship. Tingley faces up to \$5,000 per violation and suspension of his therapist license. After the Ninth Circuit Court of Appeals declined to protect Tingley's practice, Alliance Defending Freedom filed a petition for writ of certiorari to the Supreme Court on March 27, 2023.

**Status:** The Supreme Court will consider whether to take the case at its September 26 conference.

***Missouri Department of Corrections v. Finney* (No. 23-203): Can jurors be disqualified for being Christian?**

An attorney in Missouri asked a state court to disqualify a group of Christian jurors from an employment discrimination case because his client was gay. He assumed that, because the jurors held traditional Christian beliefs, they would be biased against the plaintiff's legal claims. To "err on the side of caution," the court struck the Christians from the jury. Represented by Missouri Attorney General Andrew Bailey and Solicitor General Josh Divine, the state Department of Corrections is asking the Supreme Court to step in and make clear that courts cannot target jurors because of their religious beliefs.

**Status:** The Attorney General filed a petition for a writ of certiorari on August 31, 2023.

***Speech First v. Sands* (No. 23-156): Can students challenge university rules that threaten religious speech on campus?**

Hundreds of American universities have created "bias response teams" that solicit reports of controversial speech on campus to track, investigate, and punish alleged perpetrators. Bias-response teams are the latest in a string of efforts by universities to crack down on students who have unpopular opinions or beliefs, including religious beliefs. Speech First, a coalition of students, parents, faculty, and others filed a lawsuit against Virginia Tech to protect First Amendment rights on college campuses. On May 21, the Fourth Circuit Court of Appeals ruled that Speech First could not challenge the bias response team in federal court.

**Status:** With the help of their attorneys at Consovoy McCarthy PLLC, Speech First filed for a writ of certiorari at the Supreme Court on August 14, 2023.



## PETITIONS SEEKING SUPREME COURT REVIEW



### ***Apache Stronghold v. United States:* Does the Religious Freedom Restoration Act and the First Amendment allow the government to completely obliterate a Native American sacred site and end core religious practices forever?**

Since before recorded history, Western Apache and other Native tribes have gone to their sacred site at Oak Flat (known in Apache as Chi'chil Bildagoteel) in Arizona to worship, pray, and perform essential religious ceremonies. For decades, Oak Flat has been protected by the federal government from mining and other practices that would destroy the Apache land. But in 2021, the United States government pushed ahead on a decision to give the land away to Resolution Copper, a foreign-owned mining company with a history of cultural and environmental degradation. Resolution Copper has announced its plan to blow a 2-mile wide, 1,100-foot crater into the land, ending native religious practices forever. Apache Stronghold—a coalition of Apaches, other Native tribes, and non-Native allies—sued the federal government in federal district court in Arizona, where the trial court denied the request to protect the sacred site. With the help of Becket, Apache Stronghold filed an emergency appeal to the Ninth Circuit Court of Appeals. In June 2022, the Ninth Circuit denied the Apache's request to save Oak Flat in a 2-1 decision—a decision the whole Circuit decided to reconsider.

**Status:** In March, 2023, the Ninth Circuit held oral argument en banc. Should the en banc court decide not to protect Oak Flat, Becket plans to file a petition for writ of certiorari at the Supreme Court.



### ***Fellowship of Christian Athletes v. San Jose Unified School District:* Can school districts exclude religious student clubs?**

For over a decade, the Fellowship of Christian Athletes student club met at San Jose Unified School District schools in California without incident. But when district officials singled out FCA's religious beliefs for ridicule, goaded students into protesting and harassing the club, and ultimately kicked the club off campus, FCA and its student leaders were shocked and hurt. After district officials refused to reinstate the club, FCA and its student leaders asked federal courts to permit the students to reestablish their longstanding FCA student clubs and protect their members from further harassment. On September 13, 2023, after hearing the case en banc with a panel of eleven federal judges, the Ninth Circuit ruled in FCA's favor, vindicating its ability to have student clubs gather on campus. The Ninth Circuit also overruled prior precedent which limited Free Exercise and Free Speech rights.

**Status:** The San Jose Unified School District has until December 2023 to file a petition for a writ of certiorari at the Supreme Court.





***Mahmoud v. McKnight*: Can parents opt their children out of lessons that push one-sided sex and gender ideology?**

In fall 2022, the Montgomery County Board of Education introduced over 20 new “inclusivity” books for its pre-K through eighth grade classrooms. But rather than focusing on basic civility and kindness, these books champion pride parades, gender transitions, and pronoun preferences for children. For example, one book tasks three- and four-year-olds to search for images from a word list that includes “intersex flag,” “[drag] queen,” “underwear,” “leather,” and the name of a celebrated LGBTQ activist and sex worker. Another encourages fifth graders to discuss what it means to be “non-binary.” Other books advocate a child-knows-best approach to gender transitioning, telling students that a decision to transition doesn’t have to “make sense” and that doctors only “guess” when identifying a newborn’s sex anyway. The School Board said no parents could opt out—and that no parents would even know when the books are being read to their students. A group of Muslim, Ethiopian Orthodox, Catholic, and other religious parents, represented by Becket, sued to restore their rights. After a district court denied their request, the parents went to the Fourth Circuit Court of Appeals.

**Status:** Should the Fourth Circuit leave the storybook mandate in place, Becket will ask the Supreme Court to strike down the Board’s no notice, no opt-out policy.

***Landor v. Louisiana*: Can former prisoners sue over religious liberty violations that happened behind bars?**

Damon Landor maintains religious dreadlocks as requirement of his Rastafarian faith. While he was incarcerated in Louisiana, officials from the state Department of Corrections forcibly shaved his dreadlocks in violation of Supreme Court precedent and federal law. After he served his time, he sued prison officials for damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA), but a trial court dismissed his case, claiming that damages are not available to former prisoners under RLUIPA. The Fifth Circuit upheld the lower court’s decision in September of 2023, saying that although it “*emphatically* condemn[ed] the treatment that Landor endured” the Supreme Court’s recent decision in *Tanzin v. Tanvir* does not apply and Landor cannot seek damages under RLUIPA.

**Status:** Landor, who is represented by attorneys at Weil, Gosthal & Manges, currently has until December to file a petition for a writ of certiorari at the Supreme Court.