

# SCOTUS 2019:

## *Religious Liberty Cases to Watch*

Was the October 2018 SCOTUS term the calm before the religious liberty storm? The Supreme Court has given several indications that this coming term could be a blockbuster for religious liberty. Two important cases implicating religious liberty have already been granted, and an array of cert petitions have been filed with the Court for the October 2019 term. Important issues before the Court include the future of discriminatory Blaine amendments, the scope of the ministerial exception, and the possible revisiting of *Employment Division v. Smith*. This document tracks cases that the Court has already taken, as well as cases to watch.

### Cert Already Granted:

#### Espinoza v. Montana Department of Revenue

##### *Blaine Amendments*

Montana created a school choice scholarship program but excluded religious schools from eligibility, citing a provision of the Montana Constitution known as a “Blaine Amendment.” Blaine Amendments arose from anti-religious bigotry and threaten people of all faiths. The Supreme Court will decide if excluding all religious schools from Montana’s school funding program violates the First Amendment. Kendra Espinoza is represented by the Institute for Justice.

**Status:** Argument has not yet been scheduled.

#### **Bostock v. Clayton County and Zarda v. Altitude Express (consolidated), EEOC v. Harris Funeral Homes**

##### *Employment decisions and sexual orientation and gender identity*

Title VII prohibits employment discrimination based on “sex.” The Court will decide if Title VII’s definition of “sex” includes “sexual orientation” or “gender identity,” which will impact organizations that hire according to their beliefs or adhere to statements of faith. Freeman Mathis & Gary, LLP, Zabell & Associates, P.C., and Alliance Defending Freedom are counsel in these cases.

**Status:** Argument will be held on October 8, 2019.



# Petitions Seeking Supreme Court Review

## Free Exercise and Free Speech Cases

### Fulton v. Philadelphia

#### *Foster care and discrimination against religious charities*



Catholic Social Services (CSS) is one of Philadelphia's best foster care agencies. The City stopped referring foster children to CSS in March 2018 and threatened to exclude the agency from the city's foster care system because of CSS's religious beliefs about marriage. The issue before the Court is whether the City discriminated against CSS and its foster parents by preventing it from serving children and families consistent with the agency's sincere religious beliefs.

**Status:** The Supreme Court will likely review the cert petition in late October or early November.

**Additional resources:** [Video featuring petitioner Sharonell Fulton](#)

### Ricks v. Idaho Board of Contractors

#### *Equal access to government licensing*



George Ricks is an independent contractor in Idaho. The state requires all independent contractors to register and provide their social security number in order to receive the license they need to work. George Ricks cannot supply his social security number consistent with his sincere religious beliefs, though he can submit alternative forms of identification like his birth certificate. Nevertheless, the Idaho Board of Contractors refused to provide him with registration necessary to work. The issue before the Court is whether the Free Exercise Clause prohibits Idaho from denying Mr. Ricks an easy religious accommodation, thus depriving him of his livelihood.

**Status:** The Supreme Court called for a response to the petition. After receiving Idaho's response, the Court will likely consider the petition before the end of the year.

### Murphy v. Collier

#### *Equal access for minority faiths*

Patrick Henry Murphy, a Texas prisoner, was scheduled for execution on March 28, 2019. Murphy asked that his Buddhist spiritual advisor be present in the execution chamber. The lower courts denied relief, but the Supreme Court stepped in at the last minute and stayed the execution. Murphy's petition is now before the Supreme Court and asks the Court to address, among other things, whether the exclusion of all religious ministers from the execution chamber (a policy Texas adopted after the Supreme Court stayed Murphy's execution) violates statutory and constitutional protections. Patrick Henry Murphy is represented by the University of Houston Law Center.

**Status:** A cert petition was filed on July 29, 2019.



## **Arlene's Flowers v. Ingersoll**

### ***Individual freedom***

Baronnelle Stutzman, a floral artist and devout Christian, was asked by a long-time customer to create custom arrangements for his same-sex wedding. When she politely declined, citing her beliefs, the Washington Attorney General and the ACLU sued to force her to provide the arrangements, threatening the loss of her business and life savings. SCOTUS remanded the case after *Masterpiece Cakeshop* but the Washington Supreme Court again ruled against Stutzman. Stutzman is represented by Alliance Defending Freedom.

**Status:** A cert petition was filed on September 11, 2019.

## **Washington Metropolitan Transit Authority (“WMATA”) v. Archdiocese of Washington**

### ***Free speech and viewpoint discrimination***

The Archdiocese of Washington sought to advertise its Christmas campaign on Washington Metro buses. While WMATA displays all manner of “secular” Christmas ads, it refused the Archdiocese’s request because it has a policy against religious ads. This case asks the Court to decide if WMATA’s no-religious-speech policy violates either the First Amendment or the Religious Freedom Restoration Act (RFRA). The Archdiocese is represented by Kirkland & Ellis L.L.P.

**Status:** The Supreme Court will consider the petition at its conference on October 1.

## **Veronica Price v. City of Chicago**

### ***Free speech and buffer zones***

Several religiously-motivated pro-life advocates sued Chicago, arguing that the City’s “bubble zone” ordinance prevents them from engaging in peaceful conversations with women who may need their counsel. This case questions the Supreme Court’s *Hill v. Colorado* decision (upholding an almost identical buffer zone) in light of more recent Supreme Court decisions, like *McCullen v. Coakley*. Veronica Price is represented by the Thomas More Society and Consovoy McCarthy.

**Status:** The Supreme Court will consider the petition at its conference on October 1.



## Church Autonomy/Ministerial Exception Cases

### **Our Lady of Guadalupe School v. Morrissey-Berru**

#### *Freedom of religious groups from state intrusion*



This case, coming up from the 9<sup>th</sup> Circuit, presents the Court with the chance to clarify its *Hosanna-Tabor* decision. Our Lady of Guadalupe School employs teachers whose duties include teaching religion class and leading students in daily prayer. When a fifth-grade teacher at the school failed repeatedly to meet the school's requirements and expectations, the administration chose not to renew the teacher's employment contract. The teacher sued.

**Status:** The Supreme Court will likely review this cert petition in November.

### **St. James Catholic School v. Biel**

#### *Freedom of religious groups from state intrusion*



In a similar case, also out of the 9<sup>th</sup> Circuit, another Catholic elementary school, St. James School, chose not to renew a fifth-grade teacher's contract after it found her classroom performance below the school's standards. The teacher sued the school. This case presents another opportunity for the Court to clarify the ruling in *Hosanna-Tabor*.

**Status:** The Supreme Court will likely review this cert petition in November.

### **Roman Catholic Archdiocese of San Juan v. Feliciano**

#### *Church autonomy and religious association*

The Puerto Rico Supreme Court ruled that all Roman Catholic churches in Puerto Rico were one legal entity and were responsible for a \$4.7 million pension obligation taken on by three individual Catholic schools. The decision forced one diocese into bankruptcy and gave the government authority to seize property belonging to any Catholic entity on the island. The Archdiocese is represented by Kirkland & Ellis L.L.P.

**Status:** The Supreme Court called for the views of the Solicitor General on June 24, 2019.



## **Presbyterian Church v. Eric Hoey**

### ***Church autonomy and ecclesiastical abstention***

When four Presbyterian Church (U.S.A.) officials were fired after failing a church financial audit, they sued the denomination for defamation. At issue is whether the First Amendment's church autonomy doctrine bars courts from second-guessing a church's decision to enforce its standards of ethical conduct for religious leaders. The Presbyterian Church (U.S.A.) is represented by Kirton McConkie, P.C.

**Status:** The Supreme Court is scheduled to consider the petition at its conference on October 1.

## **Turner v. Hines**

### ***Church autonomy***

When Beulah Baptist Church fell into financial trouble in 2014, dissident church members sued the pastor (claiming to act on behalf of the congregation) and alleged mismanagement of the church's funds. The question before the Court is whether secular courts can interfere in disputes over church governance and leadership or whether those decisions must be left to the Church and its members for internal resolution. Beulah Baptist Church is represented by Butzel Long, PC.

**Status:** A cert petition was filed on July 30, 2019, and the Supreme Court called for a response.

## Cases involving Federal Statutes and Regulations Protecting Religious Freedom

## **Patterson v. Walgreens**

### ***The right to Sabbath observance***

Darrell Patterson was fired by Walgreens executives for failing to run a training program on his Sabbath—after raising this issue with his employer on numerous occasions and being assured of an accommodation. Despite this long-standing agreement to accommodate his Sabbath observance, Walgreens suddenly fired Mr. Patterson after he was unable to conduct a Saturday training session (even though other employees could have easily covered the training and, it turns out, Mr. Patterson completed the training without incident on Monday). At issue is the scope of Title VII protections for employees against religious discrimination by their employer. Patterson is represented by Gene Schaerr of Schaerr Jaffe, Todd McFarland of the Seventh-day Adventist Church, and Becket.

**Status:** The Supreme Court called for the views of the Solicitor General in March 2019; the Solicitor General should provide his views before the end of the year.

**Additional resources:** [See Darrell Patterson speak about his experience](#)





## **Little Sisters of the Poor, Round 2**

### ***Protecting religious exemptions to the federal HHS Mandate***

Even after years of legal battles, a 2016 Supreme Court victory, and a new regulation, the Little Sisters of the Poor—an order of nuns who care for the elderly poor—are still defending their right to run their ministry according to their Catholic faith. In November 2017, [California](#), Pennsylvania, and several other states sued in federal court to take away the nuns’ hard-won religious exemption, arguing that religious exemptions from the mandate are unconstitutional. In July, the Third Circuit ruled against the Little Sisters and for Pennsylvania and New Jersey.

**Status:** The Little Sisters plan to appeal the Third Circuit’s decision to the Supreme Court.

## **United States v. Tanvir**

### ***Money damages under RFRA***

Several Muslim men who lawfully immigrated to the United States were asked by the Federal Bureau of Investigation to serve as informants to the United States government in terrorism-related investigations. The men refused, in part citing their religious beliefs. They allege that the United States government improperly used the No Fly List to retaliate against them for refusing, in effect attempting to coerce them into violating their religious beliefs to avoid placement on the list. They want to hold the federal employees personally liable for money damages, and the question is whether that is authorized by RFRA. The Muslim men are represented by the City University of New York School of Law.

**Status:** A cert petition was filed on July 12, 2019.

## Establishment Clause Case

## **Mercer County v. Deal**

### ***Standing***

Jessica Doe was enrolled in Mercer County Schools from kindergarten through third grade. Beginning in fourth grade, Jessica enrolled in a neighboring school district. Though she had no intention of returning to Mercer County Schools, months later Jessica sued the school district, alleging that Mercer County’s Bible in the School program violates the Establishment Clause and citing it as a major reason that she unenrolled. The issue is whether Jessica is the proper person (has standing) to sue when the alleged injury was resolved because she changed schools and has no intention of returning. Mercer County Board of Education is represented by O’Melveny & Myers LLP and First Liberty Institute.

**Status:** The Supreme Court is scheduled to consider the petition at its conference on October 1.