

SCOTUS 2020-2021: *Religious Liberty Cases to Watch*

The October 2019 term was a banner year for religious liberty, with both big wins and unexpected curveballs. The October 2020 term presents the Supreme Court with an opportunity to reexamine two infamous religious liberty precedents—*Smith* and *Hardison*—and to confirm and restore key statutory and constitutional protections for individuals of faith. This document provides an overview of the religious liberty cases to watch this coming term—both those the Court has already decided to hear and those still awaiting a grant of review.

CERT GRANTED

Fulton v. Philadelphia

Protecting the Free Exercise of Religion. Sharonell Fulton and Toni Simms-Busch have been excluded from taking in foster children simply because they partner with Catholic Social Services, a faith-based foster agency. As a result, loving homes that could be caring for kids *today* are sitting empty. Why? Because—instead of working to resolve the severe shortage of foster families in Philadelphia—the city government chose to target and punish Catholic Social Services and its families for their religious beliefs. This is an unnecessary fight. Same-sex couples successfully foster with dozens of agencies, and Catholic Social Services hasn't prevented anyone from fostering. In addition to hopefully protecting Catholic Social Services from religious discrimination, this case presents an opportunity for the Supreme Court to revisit the scope of its 1990 decision in *Employment Division v. Smith*, which sharply limited free exercise protections.

Status: The Supreme Court granted review of the case on February 24, 2020. In June of 2020, dozens of diverse religious groups, 76 Members of Congress, 16 states, and many others filed friend-of-the-court briefs urging the Court to protect religious ministries that serve vulnerable children and communities across the country. Argument will take place on November 4, 2020 and a decision is likely by the end of June 2021.

Tanzin v. Tanvir

Fair Recourse for Religious Discrimination. When Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari declined to serve as FBI informants against fellow Muslims, they were placed on the government's No-Fly List, prohibiting them from any commercial air travel in or out of the United States. Claiming this was baseless retaliation, they took the government to court. The FBI then removed them from the List to avoid losing the case. After the Second Circuit ruled that the federal agents had violated the individuals' rights, the FBI appealed to the Supreme Court. The issue before the Court is whether government officials can be held liable for damages when they violate the Religious Freedom Restoration Act, or whether they can avoid all legal repercussions simply by stopping their unlawful conduct once they are sued. In February, Becket, as the leading expert on religious liberty and RFRA, filed a friend-of-the-court brief urging the Court to allow damages cases to move forward in such situations, so that government officials cannot use procedural loopholes to violate religious freedom with impunity.

Status: The Supreme Court granted review of the Second Circuit's decision on November 22, 2019, with oral argument scheduled for March 2020. After the March argument session was postponed due to COVID, *Tanzin v. Tanvir* was rescheduled to be argued on October 6, 2020. A decision is likely by the end of June 2021.



Uzuegbunam v. Preczewski

Free Speech on College Campuses. Chike Uzuegbunam reserved a spot within his university’s “free speech zone” to share the good news of the Gospel with his peers—as he was called to do by his faith. But while he was preaching, a campus police officer stopped him and charged him with “disorderly conduct.” Unable to speak about his faith on campus, Uzuegbunam and another affected student sued. But before the case could be decided, the school changed its speech rules and asked the court to dismiss the case as moot. The court did so—thus refusing to hold school officials accountable for their past violation of the students’ First Amendment rights. The issue now before the Supreme Court is whether the fact that the students had asked for “nominal damages”—a legal remedy designed to afford relief for violations of rights that are hard to quantify in monetary terms—prevents the school from using its rule change to end the case. Becket is filing a friend-of-the-court brief in support of the students. The Alliance Defending Freedom is representing the students at the Supreme Court.

Status: The case will be argued in 2021. A decision is likely by the end of June 2021.

PETITIONS SEEKING SUPREME COURT REVIEW

Dalberiste v. GLE Associates

Strengthening Employment Rights for Religious Minorities. Mitche Dalberiste had just been offered by GLE Associates as an industrial hygiene technician, and he accepted. But as soon as the company learned that Dalberiste—a Seventh-day Adventist—required a religious accommodation to keep observe the Sabbath, his job offer was rescinded. Forced to choose between his faith and his livelihood, Dalberiste brought suit under Title VII of the Civil Rights Act. This statute requires employers to “reasonably accommodate” religious practice absent an “undue hardship.” Unfortunately, the lower courts—bound by a 1977 Supreme Court ruling (*Trans World Airlines v. Hardison*)—concluded that even a trivial burden on GLE Associates was sufficient to allow the company to deny him a religious accommodation. This violates Congress’ intent to protect religious minorities from employment discrimination, and instead makes it extremely easy for companies to use any excuse to fire or deny accommodations to religious employees. Becket is asking the U.S. Supreme Court to revisit *Hardison* and vindicate the right of Americans of all faiths to live and work without being forced to violate their religious beliefs.

Status: In partnership with the Seventh-day Adventist Church and Gene Schaerr of Schaerr | Jaffe, Becket asked the Supreme Court to review Mr. Dalberiste’s case on June 24, 2020. The case will be considered by the Justices at conference on October 9.



Small v. Memphis Light, Gas & Water

Upholding Religious Exercise in the Workplace. Jason Small worked as an electrician at Memphis Light, Gas & Water in Tennessee for more than a decade. But after suffering an on-the-job injury in 2013, the company changed his position. With this new position came a new schedule that conflicted with his religious worship as a Jehovah's Witness. Despite repeatedly requesting a different shift or position that would accommodate his religious worship, the issue remained unresolved. Rather than honor Small's right to practice his religion, Memphis Light claimed that accommodating Small's religious worship would cause undue hardship. Seeking to strengthen protections for employees from religious discrimination, this case, like *Dalberiste v. GLE Associates*, presents an opportunity for the Supreme Court to reconsider *Trans World Airlines, Inc. v. Hardison's* interpretation of "undue hardship" with respect to employees' religious accommodation requests. *Hardison* interpreted undue hardship to mean anything greater than bare minimum cost to the employer, which leaves employees with bare minimum protection of their right to practice their faith.

Status: Jason Small filed a petition for a writ of certiorari on June 15, 2020. Memphis Light, Gas & Water will file its response by October 16, 2020, and is likely to be considered by the Justices at a conference in November. Becket filed a petition for certiorari on the same Title VII issue in *Dalberiste v. GLE Associates Inc.*, on June 24, 2020.

Dignity Health v. Minton

Protecting Free Exercise for Religious Organizations. Dignity Health is a non-profit Catholic healthcare system in California. At its Mercy San Juan Medical Center, a doctor scheduled a hysterectomy for Evan Minton, who identifies as a transgender man. Dignity Health became aware that the hysterectomy was in pursuit of gender transition. Because this course of treatment contradicts the Center's Catholic beliefs, it referred the patient to a non-Catholic hospital. Despite successfully undergoing the treatment at that hospital, Minton is pursuing charges of discrimination against Dignity Health. This case concerns the First Amendment's protection of religious groups from being compelled to allow medical procedures that violate their religious beliefs and medical judgment.

Status: Dignity Health filed a petition for a writ of certiorari on March 13, 2020. Minton filed a response on July 15, 2020. The case will be considered by the Justices at conference on September 29, 2020.



Schulz v. Presbytery of Seattle

Church Property Dispute. First Presbyterian Church of Seattle was incorporated in 1874. Since then, it has been affiliated with various Presbyterian denominations including, most recently, the Presbyterian Church (U.S.A.). In 2015, First Presbyterian’s congregation voted to leave PCUSA, citing differences in their approach to ministry and urban outreach. In response, PCUSA sent in their own church “arbiters” who determined that all the congregation’s church property—which had been paid for, built, and maintained by the congregation for generations, long before any affiliation with PCUSA—actually belonged to PCUSA. The denomination thus sought to kick the congregation out of its own buildings—with no legal title or any other legal agreement to support their decision. The denomination also sued First Presbyterian in state court and obtained a ruling in its favor. First Presbyterian is now appealing this decision to the U.S. Supreme Court, and in early October Becket plans to file a friend-of-the-court brief in support.

Status: The petition for certiorari was filed in late August 2020, and the Court will likely decide whether to grant review in late 2020/early 2021.

Shelton v. Patterson

Church Property Dispute. Kenneth Shelton claims to be elected bishop of the Church of the Lord Jesus Christ of the Apostolic Faith. Anthoneé Patterson is a rival claimant to the leadership of the Church. The lower courts awarded control of the Church and its property to Patterson, and Shelton seeks review at the Supreme Court.

Status: Shelton filed a petition for a writ of certiorari on April 24, 2020. Patterson filed his brief in response on June 11, 2020, and the case will be considered at conference on September 29, 2020.