# Supreme Court Cases Impacting Religious Liberty

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# Marriage

**1879: *Reynolds v. United States*[i]**
CASE: The Court examined whether the federal anti-bigamy statute violated the First Amendment's Free Exercise Clause because plural marriage is part of religious practice.

RESULT: In a unanimous decision, the Court upheld the federal law banning polygamy, noting that the Free Exercise Clause forbids government from regulating belief, but does allow government to punish activity judged to be criminal, regardless of an activity's basis in religious belief.

**1890: *Davis v. Beason*[ii]**
CASE: Congress had passed the Edmunds Act in 1882, which made polygamy a felony; over 1,300 Mormons were imprisoned. The Act also required test oaths requiring voters to swear they were not bigamists or polygamists. A statute of the Idaho Territory required a similar oath in order to register to vote, in order to limit or eliminate Mormons' participation in government and their control of local schools.[1] The loyalty also forbade being a member of any organization that advocated or spent resources defending bigamy or polygamy.

Mormons initiated a challenge to Idaho's oath test by having members who did not have plural marriages registering to vote. Samuel D. Davis, a resident of Oneida County, Idaho, was convicted in the territorial district court of swearing falsely after taking the voter's oath.

RESULT:
The Court unanimously ruled that federal laws against polygamy did not conflict with the free exercise clause of the First Amendment to the United States Constitution.

**2015: *Obergefell v. Hodges*[iii]**
CASE: Between January 2012 and February 2014, plaintiffs in Michigan, Ohio, Kentucky, and Tennessee filed federal district court cases that culminated in Obergefell v. Hodges. After all district courts ruled for the plaintiffs, the rulings were appealed to the Sixth Circuit. In November 2014, following a series of appeals court rulings that year from the Fourth, Seventh, Ninth, and Tenth Circuits that state-level bans on same-sex marriage were

unconstitutional, the Sixth Circuit found such bans to be constitutional. This created a split between circuits and led to a Supreme Court review.

RESULT: In a 5–4 decision, the Court ruled that the Fourteenth Amendment requires all states to grant same-sex marriages and recognize same-sex marriages granted in other states. The Court overruled its prior decision in Baker v. Nelson, which the Sixth Circuit had invoked as precedent.

# Life

**1973: *Roe v. Wade*[iv]**
CASE: Jane Roe (a fictional name used in court documents to protect the plaintiff's identity) filed a lawsuit against Henry Wade, the district attorney of Dallas County, Texas, where she resided, challenging a Texas law making abortion illegal except by a doctor's orders to save a woman's life. In her lawsuit, Roe alleged that the state laws were unconstitutionally vague and abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

RESULT: In a 7-2 decision, the Court ruled that the Constitution of the United States generally protects a pregnant individual's liberty to have an abortion.

**1980: *Harris v. McRae*[v]**
CASE: In 1965, Congress established the Medicaid program, via Title XIX of the Social Security Act, to provide federal financial assistance to states that chose to reimburse certain costs of medical treatment for needy persons. Beginning in 1976, Congress passed a number of versions of the "Hyde Amendment" that severely limited the use of federal funds to reimburse the cost of abortions under the Medicaid program. Cora McRae, a pregnant Medicaid recipient, challenged the Amendment and took action against Patricia R. Harris, Secretary of Health and Human Services.

INTERESTING NOTE: Among those who joined in the case to have paid abortions were officers of the Women's Division of the Board of Global Ministries of the United Methodist Church. (see https://supreme.justia.com/cases/federal/us/448/297/}

RESULT: The Court held in a 5-4 ruling that states participating in Medicaid are not required to fund medically necessary abortions for which federal reimbursement was unavailable as a result of the Hyde Amendment, which restricted the use of federal funds for abortion. The Court also held that the funding restrictions of the Hyde Amendment did not violate the Fifth Amendment or the Establishment Clause of the First Amendment.

**1988: *Bowen v. Kendrick*[vi]**
CASE: The Adolescent Family Life Act (AFLA) was implemented by the United States Congress in 1981 as an amendment to the Public Health Service Act. AFLA supplied grants to public and non-profit organizations for the provision of counseling services and education to adolescents regarding premarital sexual relations. AFLA funds could not be used for family planning services, to provide abortions or abortion counseling, or to advocate or encourage abortion. A group of taxpayers, clergymen, and the American Jewish Congress filed a suit alleging that AFLA violated the Establishment Clause of the First Amendment.

RESULT: In a 5-to-4 decision, the Court held that the "advancement of religion" was not AFLA's primary effect. Although it funded religious and other institutions without expressly prohibiting the use of such funds for religious purposes, AFLA required potential recipients to reveal what services they intended to provide and how they would provide them. Thus, the government could protect against the misuse of its funds. At the same time, however, such oversight did not create an "excessive entanglement" between church and state because AFLA merely authorized funding of religiously affiliated, rather than pervasively sectarian, organizations.

**1990: *Cruzan by Cruzan v. Director, Missouri Department of Health*[vii]**
CASE: In 1983, Nancy Beth Cruzan was involved in an automobile accident which left her in a "persistent vegetative state." She was sustained for several weeks by artificial feedings through an implanted gastronomy tube. When Cruzan's parents attempted to terminate the life-support system, state hospital officials refused to do so without court approval. The Missouri Supreme Court ruled in favor of the State's policy over Cruzan's right to refuse treatment.

RESULT: In a 5-to-4 decision, the Court held that while individuals enjoyed the right to refuse medical treatment under the Due Process Clause, incompetent persons were not able to exercise such rights. Absent "clear and convincing" evidence that Cruzan desired treatment to be withdrawn, the Court found the State of Missouri's actions designed to preserve human life to be constitutional. Because there was no guarantee family members would always act in the best interests of incompetent patients, and because erroneous decisions to withdraw treatment were irreversible, the Court upheld the State's heightened evidentiary requirements.

**1997: *Washington v. Glucksberg*[viii]**
CASE: Harold Glucksberg, a physician, four other physicians, three terminally ill patients, and the non-profit organization Compassion in Dying challenged Washington's ban against assisted suicide in the Natural Death Act of 1979. They claimed that assisted suicide was a liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

RESULT: In a unanimous decision, the Court held that a right to assisted suicide in the United States was not protected by the Due Process Clause.

**1997: *Vacco v. Quill*[ix]**
CASE: Dr. Timothy E. Quill, along with other physicians and three seriously ill patients who have since died, challenged the constitutionality of the New York State's ban on physician-assisted suicide. New York's ban, while permitting patients to refuse lifesaving treatment on their own, has historically made it a crime for doctors to help patients commit or attempt suicide, even if patients are terminally ill or in great pain.

RESULT: In a unanimous decision, the Court found that a New York ban on physician-assisted suicide was constitutional, and preventing doctors from assisting their patients, even those terminally ill and/or in great pain, was a legitimate state interest that was well within the authority of the State to regulate. In brief, this decision established that, as a matter of law, there was no constitutional guarantee of a "right to die."

**2018: *National Institute of Family and Life Advocates (NIFLA) v. Becerra*[x]**
CASE: California's so-called Reproductive FACT Act compelled pro-life pregnancy care centers to post a conspicuous sign in their waiting rooms saying that California provides free or low-cost abortion, as well as providing a number to call for abortion referrals. The law also forced non-medical pregnancy centers to add large disclosures about their non-medical status in all advertisements, wrongly implying that they were unqualified to provide charitable services. The National Institute of Family and Life Advocates (NIFLA), a religious nonprofit comprising hundreds of member pregnancy centers from across the nation (including California), challenged this law. ADF represented them all the way to the Supreme Court.

RESULT: In a 5-4 decision, the Court found that NIFLA was likely to win its claim that the government cannot compel pro-life groups and individuals to

express a message that conflicts with their beliefs. This led to a permanent injunction that prevented California from enforcing the unconstitutional law. No one should be forced by the government to express a message that violates their convictions, especially on deeply divisive subjects such as abortion.

**2020: *March for Life Education and Defense Fund v. California*[xi]**
CASE: In 2012, the Obama administration's Department of Health and Human Services (HHS) mandated that employers provide their employees with abortion-inducing drugs, sterilization, and contraception—regardless of their religious or moral convictions. If they refused, they faced heavy financial penalties under the Affordable Care Act ("Obamacare"). The Supreme Court first dealt major blows to the mandate in 2014 and 2016—in ***Hobby Lobby Stores v. Burwell*** and ***Zubik v. Burwell***.

In 2017, the Trump administration issued new HHS rules—consistent with these previous Supreme Court rulings—that were meant to ensure that religious and pro-life organizations can pursue their missions consistently with their beliefs. But Pennsylvania, California, and other States filed lawsuits to block the new rules. The Little Sisters of the Poor and March for Life Education and Defense Fund intervened in these lawsuits to defend the new HHS rules.

RESULT: In a 7-2 decision, the Court upheld the HHS rules that protected the conscience rights of religious and pro-life organizations in two similar cases: ***Little Sisters of the Poor v. Commonwealth of Pennsylvania*** and *Trump v. Commonwealth of Pennsylvania*. The next day, the Supreme Court vacated the 9th Circuit's decision against March for Life and ordered it to reconsider its ruling.

**2022: *Dobbs v. Jackson Women's Health Organization*[xii]**
CASE: Mississippi passed a law called the "Gestational Age Act," which prohibits all abortions, with few exceptions, after 15 weeks' gestational age. Jackson Women's Health Organization, the only licensed abortion facility in Mississippi, and one of its doctors filed a lawsuit in federal district court challenging the law and requesting an emergency temporary restraining order (TRO). After a hearing, the district court granted the TRO while the litigation proceeded to discovery. After discovery, the district court granted the clinic's motion for summary judgment and enjoined Mississippi from

enforcing the law, finding that the State had not provided evidence that a fetus would be viable at 15 weeks, and Supreme Court precedent prohibits states from banning abortions prior to viability. The U.S. Court of Appeals for the Fifth Circuit affirmed.

RESULT: In a 6-3 decision, the Court held the Constitution does not confer a right to abortion; Roe v. Wade and Planned Parenthood of Southeastern Pennsylvania v. Casey are overruled; the authority to regulate abortion is returned to the people and their elected representatives.

# Education

**1923: *Meyer v. State of Nebraska*** [xiii]
CASE: Nebraska passed a law prohibiting teaching grade school children any language other than English. Meyer, who taught German to the Confirmation class in a Lutheran school, was convicted under this law.

RESULT: In a 7-2 decision, the Court declared the Nebraska law unconstitutional, reasoning it violated the liberty protected by Due Process Clause of the Fourteenth Amendment. Liberty, the Court explained, means more than freedom from bodily restraint. It also includes the right of a teacher to teach German to a student, and the right of parents to control the upbringing of their child as they see fit. While the State has a legitimate interest in encouraging the growth of a population that can engage in discussions of civic matters, the means it chose to pursue this objective was excessive.

**1947: *Everson v. Board of Education of the Township of Ewing*** [xiv]
CASE: A New Jersey law authorized reimbursement by local school boards of the costs of transportation to and from schools, including private schools. 96% of the private schools who benefitted from this law were parochial Catholic schools. Arch R. Everson, a taxpayer in Ewing Township, filed a lawsuit alleging that this indirect aid to religion violated both the New Jersey state constitution and the First Amendment.

RESULT: In a 5-4 decision, the Court ruled that the law was constitutional, because the transportation reimbursements were provided to all students regardless of religion. Also, the reimbursements were made directly to parents and not to any religious institution. This case also applied the Establishment Clause to the actions of state governments.

**1948: *Illinois ex rel. McCollum v. Board of Education*** [xv]
CASE: The case tested the principle of "released time," where public schools set aside class time for religious instruction. The Champaign County Board of Education authorized a program in which outside religious teachers hired by private third parties provided weekly religious instruction in public schools. The classes were not mandatory. McCollum, an atheist, complained that her son was ostracized for not attending the classes.

RESULT: In a 8-1 decision, the Court found that the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council violated the constitutionally-required separation of church and state.

**1962: *Engel v. Vitale*[xvi]**
CASE: The New York State Board of Regents authorized a short, voluntary prayer for recitation at the start of each school day. A group of organizations joined forces in challenging the prayer, claiming that it violated the Establishment Clause of the First Amendment. The New York Court of Appeals rejected their arguments.

RESULT: In a 6-1 decision, the Court ruled that New York's official prayer to begin the school day was an unconstitutional violation of the Establishment Clause.

**1963: *School District of Abington Township, Pennsylvania v. Schempp*[xvii]**
CASE: Under Pennsylvania law, public schools were required to read from the Bible at the opening of each school day. The school district sought to enjoin enforcement of the statute. The district court ruled that the statute violated the First Amendment, even after the statute had been amended to permit a student to excuse himself.

RESULT: In an 8-1 decision, the Court found that the Pennsylvania law and school-district practice violated the Establishment Clause and the Free Exercise Clause.

**1968: *Epperson v. Arkansas*[xviii]**
CASE: The Arkansas legislature passed a law prohibiting teachers in public or state-supported schools from teaching, or using textbooks that teach, human evolution. Epperson, a public-school teacher, sued, claiming the law violated her First Amendment right to free speech as well as the Establishment Clause.

RESULT: In its unanimous decision, the Court held that the law did violate the Establishment Clause because, as Justice Abe Fortas wrote in the Court's opinion, "Arkansas has sought to prevent its teachers from discussing the theory of evolution, because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man. No suggestion has been made that Arkansas's law may be justified by

considerations of state policy other than the religious views of some of its citizens." The Court further ruled that the First Amendment does not permit a state to require teaching and learning to be tailored to the principles or prohibitions of any religious sect or dogma.

**1971: *Lemon v. Kurtzman*[xix]**

CASE: Both Pennsylvania and Rhode Island adopted statutes that provided for those States to pay for aspects of non-secular, non-public education. The Pennsylvania statute was passed in 1968 and provided funding for non-public elementary and secondary school teachers' salaries, textbooks, and instructional materials for secular subjects. Rhode Island's statute was passed in 1969 and provided state financial support for non-public elementary schools in the form of supplementing 15% of teachers' annual salaries. The appellants in the Pennsylvania case represented citizens and taxpayers in Pennsylvania who believed that the statute violated the separation of church and state described in the First Amendment. Appellant Lemon also had a child in Pennsylvania public school.

RESULT: In an 8-0 decision, the Court set out a three-pronged test for the constitutionality of a statute, by which a statute is constitutional if: (1) it has a primarily secular purpose; (2) its principal effect neither aids nor inhibits religion; and (3) government and religion are not excessively entangled. On this basis, the Court struck down the Pennsylvania law as in violation of the Establishment Clause, finding that the statute constituted an excessive government entanglement with religion.

INTERESTING NOTE: The three-pronged test in order to avoid violating the Establishment Clause has been referred to as the "Lemon Test." This test has been historically used in numerous cases to determine the constitutionality of state actions that bear upon religion.

**1972: *Wisconsin v. Yoder*[xx]**

CASE: Jonas Yoder and Wallace Miller, both members of the Old Order Amish religion, and Adin Yutzy, a member of the Conservative Amish Mennonite Church, were prosecuted under a Wisconsin law that required all children to attend public schools until age 16. The three parents refused to send their children to such schools after the eighth grade, arguing that high school attendance was contrary to their religious beliefs.

RESULT: In a unanimous decision, the Court held that individual's interests in the free exercise of religion under the First Amendment outweighed the State's interests in compelling school attendance beyond the eighth grade. In the majority opinion by Chief Justice Warren E. Burger, the Court found that the values and programs of secondary school were "in sharp conflict with the fundamental mode of life mandated by the Amish religion," and that an additional one or two years of high school would not produce the benefits of public education cited by Wisconsin to justify the law.

**1980: *Stone v. Graham*[xxi]**

CASE: Sydell Stone and a number of other parents challenged a Kentucky state law that required the posting of a copy of the Ten Commandments in each public-school classroom. They filed a claim against James Graham, the Superintendent of Public Schools in Kentucky.

RESULT: Applying the three-prong test from ***Lemon v. Kurtzman*** (1971), the Court found 5-4 that the Kentucky law was unconstitutional, because it had no secular legislative purpose. The Court also found that by mandating posting of the Commandments under the guidance of the legislature, the state was providing official support of religion, which was a violation of the Establishment Clause.

**1982: *Mueller v. Allen*[xxii]**

CASE: A Minnesota law allowed taxpayers to deduct from their state income tax expenses incurred in providing tuition, textbooks, and transportation for their children's elementary or secondary school education. Parents who sent their children to parochial school also qualified for the deductions.

RESULT: In a 5-4 decision, the Court upheld Minnesota's tax-credit law as constitutional by applying the three-pronged test from Lemon v. Kurtzman (1971). The tax credits did not have the effect of advancing religion (primarily secular purpose), were available to all parents and applied to sectarian and nonsectarian tuition (principal effect neither aids nor inhibits religion), and did not excessively entangle government and religion.

**1985: *Aguilar v. Felton*[xxiii]**

CASE: Part of Title I of the Elementary and Secondary Education Act of 1965 authorized local institutions to receive funds to assist educationally deprived children from low-income families. Since 1966, New York City had used

portions of its Title I funding to pay salaries of employees who teach in parochial schools.

RESULT: In a 5-4 decision, the Court acknowledged that, while the efforts of the City of New York were well-intentioned, it found that the funding practices violated the Constitution.

**1990: *Board of Education of Westside Community Schools v. Mergens*[xxiv]**
CASE: The school administration at Westside High School denied permission to a group of students to form a Christian club with the same privileges and meeting terms as other Westside after-school student clubs. In addition to citing the Establishment Clause, Westside refused the club's formation because it lacked a faculty sponsor. When the school board upheld the administration's denial, Mergens and several other students sued. The students alleged that Westside's refusal violated the Equal Access Act, which requires that schools in receipt of federal funds provide "equal access" to student groups seeking to express "religious, political, philosophical, or other content" messages. On appeal from an adverse District Court ruling, the Court of Appeals found in favor of the students.

RESULT: In an 8-1 decision, the Court affirmed the lower court's judgement that, because the school allows other non-curricular groups to meet, it is bound by the Act to permit other groups to meet and cannot deny such permission on the basis of religious content of those meetings. The Court further ruled that the Act did not violate the Establishment Clause because it passes the 3-pronged test outlined in Lemon v. Kurtzman (1971). The Act grants equal access to both secular and religious speech (secular purpose), and it expressly limits participation by school officials at student religious group meetings and requires that such meetings be held during non-instructional time (does not advance religion and avoids excessive entanglement of religion and government).

**1992: *Lee v. Weisman*[xxv]**
CASE: In keeping with the practice of several other public middle and high school principals in Providence, Rhode Island, Robert E. Lee, a middle school principal, invited a rabbi to speak at his school's graduation ceremony. Daniel Weisman's daughter, Deborah, was among the graduates. Hoping to stop the rabbi from speaking at his daughter's graduation, Weisman sought a temporary restraining order in District Court, but was denied. After the

ceremony, where prayers were recited, Weisman filed for a permanent injunction barring Lee and other Providence Public School officials from inviting clergy to deliver invocations or benedictions at their schools' ceremonies.

RESULT: The Court applied the 3-pronged test from ***Lemon v. Kurtzman*** (1971) and in a 5-4 decision, held the practice to be a violation of the Establishment Clause. In the Court's opinion, Justice Anthony Kennedy wrote that the State's involvement in the practice of the clergy-led graduation prayer was pervasive "to the point of creating a state-sponsored and state-directed religious exercise in a public school."

**1997: *Agostini v. Felton*[xxvi]**

CASE: This suit was brought by a New York parochial school board, as well as the parents of some of its students, as a challenge to a District Court ruling that upheld the twelve-year-old decision set out in ***Aguilar v. Felton*** (473 US 402). The decision in Aguilar prohibited public school teachers from teaching in parochial schools as a violation of the Establishment Clause.

RESULT: In a 5-4 decision, the Court overruled its decision in *Aguilar v. Felton*. The Court held that there was no evidence to support its former presumption that the entrance of public school teachers into parochial schools will inevitably lead to the indoctrination of state-sponsored religion. The New York program under which public school teachers were sent into parochial schools did not provide parochial schools with any incentive, financial or otherwise, to establish religion in order to attract public school teachers. The Court added that, under its new view, only those policies which generate an excessive conflict between church and state will be deemed to violate the Establishment Clause. As such, one should no longer find that all entanglements between church and state have a distinctly positive or negative impact on religion.

**2000: *Santa Fe Independent School District v. Doe*[xxvii]**

CASE: Prior to 1995, a student elected as Santa Fe High School's Student Council Chaplain delivered a prayer, described as overtly Christian, over the public address system before each home varsity football game. One Mormon and one Catholic family filed suit challenging this practice and others under the Establishment Clause of the First Amendment. The District Court enjoined the public Santa Fe Independent School District from implementing

its policy as it stood. While the suit was pending, the District adopted a new policy which permitted, but did not require, student-initiated and student-led prayer at all home games and which authorized two student elections, the first to determine whether "invocations" should be delivered at games, and the second to select the spokesperson to deliver them. After the students authorized such prayers and selected a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, non-proselytizing prayer.

RESULT: In a 6-3 decision, the Court held that the student-led, student-initiated prayer at football games violated the Establishment Clause of the First Amendment. The Court applied the 3-pronged test from Lemon v. Kurtzman (1971). The policy failed for having no secular purpose (prong 1) because it "was implemented with the purpose of endorsing school prayer."

**2000: *Mitchell v. Helms*[xxviii]**

CASE: Chapter 2 of the Education Consolidation and Improvement Act of 1981 provides for the allocation of funds for educational materials and equipment, including library materials and computer software and hardware, to public and private elementary and secondary schools to implement "secular, neutral, and nonideological" programs. In Jefferson Parish, Louisiana, about 30% of Chapter 2 funds are allocated for private schools, most of which are Catholic or otherwise religiously affiliated. Mary Helms and other public school parents file suit alleging that Chapter 2, as applied in Jefferson Parish, violated the First Amendment's Establishment Clause.

RESULT: In a 6-3 plurality decision delivered by Justice Clarence Thomas, the Court held that that Chapter 2, as applied in Jefferson Parish, is not a law respecting an establishment of religion simply because many of the private schools receiving Chapter 2 aid in the parish are religiously affiliated.

**2002: *Zelman v. Simmons-Harris*[xxix]**

CASE: Ohio's Pilot Project Scholarship Program provides tuition aid in the form of vouchers for certain students in the Cleveland City School District to attend participating public or private schools of their parent's choosing. Both religious and nonreligious schools in the district may participate. Tuition aid is distributed to parents according to financial need, and where the aid is spent depends solely upon where parents choose to enroll their children. In the 1999-2000 school year, 82 percent of the participating private schools had a

religious affiliation and 96 percent of the students participating in the scholarship program were enrolled in religiously affiliated schools. Sixty percent of the students were from families at or below the poverty line. A group of Ohio taxpayers sought to enjoin the program on the ground that it violated the Establishment Clause.

RESULT: In a 5-4 decision, the Court held that the program does not violate the Establishment Clause.

**2011: *Arizona Christian School Tuition Organization v. Winn*[xxx]**
CASE: Arizona taxpayers challenged the constitutionality of Arizona's tuition tax credit in an Arizona federal district court. They alleged the tax credit violated the Establishment Clause of the First Amendment because it funneled money to private religious schools. The district court dismissed the case. On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed, holding that the taxpayers had standing to bring their suit and had alleged a viable Establishment Clause claim.

RESULT: In a 5-4 decision, the Court ruled that the challengers to the tax credit in Arizona lack standing under Article III.

**2012: *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*[xxxi]**
CASE: Cheryl Perich filed a lawsuit against the Hosanna-Tabor Evangelical Lutheran Church and School in Redford, Michigan for allegedly violating the Americans with Disabilities Act when they fired her after she became sick in 2004. After several months on disability, Perich was diagnosed and treated for narcolepsy and was able to return to work without restrictions. But she said that, at that point, the school urged her to resign and, when she refused, fired her.

Perich filed a complaint with the Equal Employment Opportunity Commission which ruled in her favor and authorized a lawsuit against the school. Attorneys representing Hosanna-Tabor Evangelical Lutheran Church and School argued that the “ministerial exception” under the First Amendment should apply in their client's case. The exception gives religious institutions certain rights to control employment matters without interference from the courts.

RESULT: In a unanimous decision, the Court held that Perich was a minister for the purposes of the Civil Rights Act's Ministerial Exception, dismissing Perich's suit and her claims for damages. The Court further explained that Perich indeed functioned as a minister in her role at Hosanna-Tabor, in part because Hosanna-Tabor held her out as a minister with a role distinct from that of its lay teachers. He also noted that Perich held herself to be a minister by accepting the formal Call to religious service required for her position. Chief Justice Roberts acknowledged that Perich performed secular duties in her position and that lay teachers performed the same religious duties as Perich, but reasoned that Perich's status as a Commissioned Minister outweighed these secular aspects of her job.

**2017: *Trinity Lutheran Church of Columbia, Inc. v. Comer*[xxxii]**

CASE: Trinity Lutheran Church of Columbia, Inc. (Trinity) operates a licensed preschool and daycare called The Learning Center. It was initially opened as a non-profit corporation, but merged with Trinity in 1985. The Learning Center has an open admissions policy and incorporates daily religious instruction into its programs. The Missouri Department of Natural Resources (DNR) offers Playground Scrap Tire Surface Material Grants that provide funds for qualifying organizations to purchase recycled tires to resurface playgrounds. Trinity applied for such a grant, but was denied because Article I, Section 7 of the Missouri Constitution states, “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section or denomination of religion.” Trinity sued and argued that the denial of its application violated the Equal Protection Clause of the Fourteenth Amendment, as well as the First Amendment’s protections of freedom of religion and speech.

RESULT: In a 7-2 decision, the Court ruled the exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment’s guarantee of free exercise of religion. The Court found the Missouri Department of Natural Resources’ policy of denying religious organizations from its Playground Scrap Tire Surface Material Grants violated the First Amendment’s Free Exercise Clause because it discriminated against otherwise eligible organizations based solely on their religious character. The Law did not need to prevent the religious organization from practicing its religious; it was sufficient that the Law denied a religious organization the same opportunity to compete for a benefit that is otherwise available to all

secular organizations. Because the State's interest in using this policy was simply to draw a wide berth around religious establishment concerns, it was not a sufficiently compelling interest.

**2020: *Espinoza v. Montana Department of Revenue*[xxxiii]**
CASE: Petitioners Kendra Espinoza and others are low-income mothers who applied for scholarships to keep their children enrolled in Stillwater Christian School in Kalispell, Montana. The Montana legislature enacted a tax-credit scholarship program in 2015 to provide a modest tax credits to individuals and businesses who donate to private, nonprofit scholarship organizations. Shortly after the program was enacted, the Montana Department of Revenue promulgated an administrative rule ("Rule 1") prohibiting scholarship recipients from using their scholarships at religious schools, citing a provision of the State Constitution that prohibits "direct or indirect" public funding of religiously affiliated educational programs. Espinoza and the other mothers filed a lawsuit in state court challenging Rule 1.

RESULT: In a 5-4 decision the Court found the application of the Montana Constitution's "no-aid" provision to a state program providing tuition assistance to parents who send their children to private schools discriminated against religious schools and the families whose children attend or hope to attend them in violation of the Free Exercise Clause.

**2020: *Our Lady of Guadalupe School v. Morrissey-Berru*[xxxiv]**
CASE: Agnes Deirdre Morrissey-Berru was a teacher at Our Lady of Guadalupe School and brought a claim against the School under the Age Discrimination in Employment Act (ADEA). The District Court granted summary judgment in favor of the school on the basis that Morrissey-Berru was a "minister." In ***Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*,** the Supreme Court first recognized a ministerial exception, which exempts religious institutions from anti-discrimination laws in hiring employees deemed "ministers." The U.S. Court of Appeals for the Ninth Circuit reversed the lower court, finding that Morrissey-Berru was not a "minister." (She had taken one course on the history of the Catholic Church, but otherwise did not have any religious credential, training, or ministerial background.) Given that she did not hold herself out to the public as a religious leader or minister, the Court declined to classify her as a minister for the purposes of the ministerial exception.

RESULT: In a 7–2 decision, the Court affirmed the principles of Hosanna-Tabor, that a person can be serving an important religious function, even if not holding the title or training of a religious leader, thus satisfying the Ministerial Exception in employment discrimination. The Court further declared that the First Amendment's Religion Clauses foreclose the adjudication of the employment-discrimination claims of Catholic school teacher Morrissey-Berru.

**2022: *Kennedy v. Bremerton School District*[xxxv]**
CASE: Joseph Kennedy, a high school football coach, engaged in prayer with a number of students during and after school games. His employer, the Bremerton School District, asked that he discontinue the practice in order to protect the school from a lawsuit based on violation of the Establishment Clause. Kennedy refused and instead rallied local and national television, print media, and social media to support him. Kennedy sued the Bremerton School District for violating his rights under the First Amendment and Title VII of the Civil Rights Act of 1964.

RESULT: In a 6-3 decision, the Court found that the Establishment Clause does not allow a government body to take a hostile view of religion in considering personal rights under the Free Speech and Free Exercise Clauses, ruling that the Board acted improperly in not renewing Kennedy's contract. The decision all but overturned *Lemon v. Kurtzman* (1971), and abandoned the subsequent "Lemon test," which had been used to evaluate government actions within the scope of the Establishment Clause, but had been falling out of favor for decades prior.

**2022: *Carson v. Makin*[xxxvi]**
CASE: The case centered on the limits of school vouchers offered by the State of Maine, which had disallowed the vouchers to be used to pay for religious-based private schools.

RESULT: In a 6–3 decision, the Court ruled that Maine's restrictions on vouchers violated the Free Exercise Clause, as they discriminated against religious-backed private schools. The Court cited two cases to resolve the dispute in this case. First, in ***Trinity Lutheran Church of Columbia, Inc. v. Comer***, the Court held that the Free Exercise Clause did not permit Missouri to discriminate against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character. Second, in

***Espinoza v. Montana Department of Revenue***, the Court held that a provision of the Montana Constitution barring government aid to any school "controlled in whole or in part by any church, sect, or denomination" violated the Free Exercise Clause because it prohibited families from using otherwise available scholarship funds at religious schools. Applying those precedents to this case, Maine may not choose to subsidize some private schools, but not others, on the basis of religious character.

**2023: Biden v. Nebraska**[xxxvii]

CASE: In 2020, then-presidential candidate Joseph Biden promised to cancel up to $10,000 of federal student loan debt per borrower. After winning the election, the Biden administration announced its intent to forgive, via executive action, $10,000 in student loans for borrowers with an annual income of less than $125,000. Nebraska and five other states challenged the forgiveness program, arguing that it violated the separation of powers and the Administrative Procedure Act.

RESULT: In a 6-3 decision, the Court said the Secretary of Education lacked the authority under the HEROES Act "to rewrite that statute to the extent of canceling $430 billion of student loan principal."

**2023: *Students for Fair Admissions v. President and Fellows of Harvard College (consolidated with Students for Fair Admissions v. University of North Carolina)*** [xxxviii]

CASE: Students for Fair Admissions, a non-profit representing students and others opposed to race-conscious admissions, sued Harvard University and the University of North Carolina, alleging their consideration of race in admissions violated Title VI of the Civil Rights Act and the Fourteenth Amendment's Equal Protection Clause. The plaintiffs also called for the Supreme Court to overturn ***Grutter v. Bollinger***, which permitted holistic consideration of race, along with other factors, to ensure admission of underrepresented students of color to achieve a diverse student body.

RESULT: in a 6-3 decision, the Court ruled that University of North Carolina's and Harvard's current race-conscious admissions policies violated the Equal Protection Clause of the Fourteenth Amendment.

**1872: *Watson v. Jones*[xxxix]**
CASE: The case involved a dispute between the pro- and anti-slavery factions within the Third/Walnut Street Presbyterian Church of Louisville, Kentucky, both of whom claimed church property. The two factions disagreed not only about the divisive issue of slavery, but also about fundamental issues of church management, such as whether the church should retain the services of a Pastor McElroy, and the selection and retention of church elders.

In an effort to resolve the controversy, the highest governmental organ of the Presbyterian Church, the General Assembly, declared the loyal faction to be the "true" Walnut Street Church. When the division persisted, the loyal group sought injunctive relief to assure its control over congregational property.

The opposition group's argument was that the General Assembly's declaration respecting the slavery issue had exceeded its authority. The Constitution of the Presbyterian Church prohibited it from "meddling in civil affairs" and, consequently, the Assembly's power to "decide controversies" and to "suppress schismatical disputes" had not been exercised within the limits of its judicatory authority.

RESULT: In a 7-2 decision, the Court held that in adjudications of church property disputes: (1) courts cannot rule on the truth or falsity of a religious teaching, (2) where a previous authority structure existed before the dispute, courts should defer to the decision of that structure, and (3) in the absence of such an internal authority structure, courts should defer to the wishes of a majority of the congregation.

**1940: *Cantwell v. Connecticut*[xl]**
CASE: Newton Cantwell and his sons, Jehovah's Witnesses, were proselytizing a predominantly Catholic neighborhood in Connecticut. They were travelling door-to-door and approaching people on the street. Two pedestrians reacted angrily to an anti-Catholic message. Cantwell and his sons were arrested and charged with: (1) violation of a Connecticut statute requiring solicitors to obtain a certificate before soliciting funds from the public, and (2) inciting a common-law breach of the peace.

RESULT: In a unanimous decision, the Court held the Cantwell's actions were protected by the First and Fourteenth Amendments. Writing for the Court, Justice Owen Roberts reasoned that, while general regulations on solicitation were legitimate, restrictions based on religious grounds were not.

**1963: *Sherbert v. Verner*[xli]**
CASE: Adeil Sherbert, a member of the Seventh-day Adventist Church, was fired from her job after she refused to work on Saturday, the Sabbath Day of her faith. The Employment Security Commission ruled that she could not receive unemployment benefits because her refusal to work on Saturday constituted a failure without good cause to accept available work. Under South Carolina law, employers were not allowed to require employees to work on Sunday.

RESULT: In a 7-2 decision, the Court held that the Free Exercise Clause of the First Amendment required the government to demonstrate both a compelling interest and that the law in question was narrowly tailored before it denied unemployment compensation to someone who was fired because her job requirements substantially conflicted with her religion.

The case established the "Sherbert Test," requiring demonstration of such a compelling interest and narrow tailoring in all Free Exercise cases in which a religious person was substantially burdened by a law. The conditions are the key components of what is usually called "strict scrutiny."

**1977: *Trans World Airlines, Inc. v. Hardison*[xlii]**
CASE: Larry Hardison was an employee at Trans World Airline. Hardison was a member of the Worldwide Church of God and refused to work on Saturdays which was his Sabbath. TWA transferred his shift from night to during the day on Saturday. But he didn't keep the same seniority once he switched job roles, and, therefore, the Union wouldn't let him have Saturdays off. TWA refused a proposal wherein he would have worked only four days a week, and he was eventually discharged for refusing to work on Saturdays.

RESULT: In a 7-2 decision, the Court found that an employer may discharge an employee who observes a Seventh-Day Sabbath. Furthermore, such employee is not entitled to equal employment opportunity protection under Title VII of the Civil Rights Act of 1964, which makes it an unlawful employment practice for an employer to discriminate against an employee on the basis of his religion.

The Supreme Court agreed in 2023 to hear a case, *Groff v. DeJoy*, that challenges the legal precedent from TWA.

**1978: *McDaniel v. Paty*[xliii]**

CASE: Since its first State Constitution in 1796, Tennessee has had a statute that prohibited ministers from serving as legislators. In 1977, Paul A. McDaniel, a Baptist minister, filed as a candidate for the State Constitutional Convention. Another candidate, Selma Cash Paty, sued for a declaratory judgment that McDaniel was disqualified. The Chancery Court held that the statute was unconstitutional because it violated the First and Fourteenth Amendments. McDaniel's name remained on the ballot and he was elected. After the election, the Tennessee Supreme Court reversed the judgment of the Chancery Court, and held that the statute did not restrict any expression of religious belief. The Court held that the state interest in maintaining the separation of church and state was sufficient to justify the restrictions of the statute.

RESULT: In a unanimous decision, the Court held that the statute made the ability to exercise civil rights conditional on the surrender of religious rights. It therefore violated the First Amendment protection of the free exercise of religion as applied to the States by the Fourteenth Amendment.

**1983: *Marsh v. Chambers*[xliv]**

CASE: Ernest Chambers, a member of the Nebraska Legislature, challenged the Legislature's chaplaincy practice in federal court. This practice involves the offering of a prayer at the beginning of each legislative session by a chaplain chosen by the State and paid out of public funds.

RESULT: In a 6-to-3 decision, the Court upheld the chaplaincy practice. In his opinion for the Court, Chief Justice Warren Burger abandoned the three-part test of Lemon v. Kurtzman, which had been the touchstone for cases involving the Establishment Clause. In its place, Burger rested the Court's opinion on historical custom. Prayers by tax-supported legislative chaplains could be traced to the First Continental Congress and to the First Congress that framed the Bill of Rights. As a consequence, the chaplaincy practice had become "part of the fabric of our society." In such circumstances, an invocation for Divine guidance is not an establishment of religion. "It is," wrote Burger, "simply a tolerable acknowledgment of beliefs widely held among the people of this country."

**1984: *Lynch v. Donnelly*[xlv]**
CASE: The City of Pawtucket, Rhode Island, annually erected a Christmas display located in the City's shopping district. The display included such objects as a Santa Claus house, a Christmas tree, a banner reading, "Seasons Greetings," and a nativity scene. The creche had been included in the display for over 40 years. Daniel Donnelly objected to the display and took action against Dennis Lynch, the Mayor of Pawtucket.

RESULT: In a 5-to-4 decision, the Court held that notwithstanding the religious significance of the creche, the City had not violated the Establishment Clause. The Court found that the display, viewed in the context of the Holiday Season, was not a purposeful or surreptitious effort to advocate a particular religious message. The Court found that the display merely depicted the historical origins of the Holiday and had "legitimate secular purposes."

**1985: *Estate of Thornton v. Caldor, Inc.*[xlvi]**
CASE: Donald E. Thornton worked as a supervisor in the Caldor Department Store chain. A devout Presbyterian, Thornton asked to be excused from working Sundays at the company's store in Torrington, Connecticut. The store required its managers to work one of every four Sundays, although rank-and-file employees were exempt under their union contract from Sunday work. In 1979, the company refused to allow Thornton to take off Sundays, but offered him a transfer to another store, an hour away in Massachusetts, that was closed on Sundays. When he turned that down, the company said it would demote him from his manager's job and cut his hourly pay from $6.46 to $3.50. Thornton had worked Sundays for nearly eight months before he became aware the store was violating Connecticut law giving employees an absolute right not to work on their chosen Sabbath.

RESULT: In a 8-1 decision, the Court found that the Connecticut Sabbath observance statute was void, saying its "unyielding weighing in favor of Sabbath observers over all other interests" results in an unconstitutional mingling of church and state.

**1986: *Goldman v. Weinberger*[xlvii]**
CASE: Goldman was a commissioned officer in the United States Air Force, an Orthodox Jew, and an ordained rabbi. He was not allowed to wear his yarmulke while on duty in his Air Force uniform. An Air Force regulation

mandated that indoors, headgear could not be worn "except by armed security police in the performance of their duties."

RESULT: In a 5-4 decision, The Court held that the Air Force regulation did not violate the Constitution. Justice Rehnquist argued that, generally, First Amendment challenges to military regulations are examined with less scrutiny than similar challenges from civilian society, given the need for the military to "foster instinctive obedience, unity, commitment, and *esprit de corps*." Since allowing overt religious apparel "would detract from the uniformity sought by dress regulations," the Air Force regulation was necessary and legitimate. In 1987, Congress passed legislation which reversed this decision and allowed members of the armed forces to wear religious apparel in a "neat and conservative" manner.

**1989: *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*[xlviii]**

CASE: Two public-sponsored holiday displays in Pittsburgh, Pennsylvania, were challenged by the American Civil Liberties Union. The first display involved a Christian nativity scene inside the Allegheny County Courthouse. The second display was a large Chanukah menorah, erected each year by the Chabad Jewish organization, outside the City-County building. The ACLU claimed the displays constituted a state endorsement of religion.

RESULT: In a 5-to-4 decision, the Court held that the creche inside the courthouse unmistakably endorsed Christianity in violation of the Establishment Clause. By prominently displaying the words, "Glory to God for the birth of Jesus Christ," the County sent a clear message that it supported and promoted Christian orthodoxy. The Court also held, however, that not all religious celebrations on government property violated the Establishment Clause. Six of the justices concluded that the display involving the menorah was constitutionally legitimate given its "particular physical setting."

**1995: *Capitol Square Review and Advisory Board v. Pinette*[xlix]**

CASE: In 1993, the Ku Klux Klan organization attempted to place an unattended cross on Capitol Square, the state-house plaza in Columbus, Ohio, during the 1993 Christmas season. Ohio law makes Capitol Square a forum for discussion of public questions and for public activities, and gives the Advisory Board responsibility for regulating access to the Square. The

Board denied the application of the Ku Klux Klan to erect the cross on Establishment Clause grounds.

RESULT: In a 7-2 decision, the Court held the display was private religious speech that "is as fully protected under the Free Speech Clause as secular private expression."

**2005: *Van Orden v. Perry*[lh]**
CASE: Thomas Van Orden sued Texas in federal district court, arguing a Ten Commandments monument on the grounds of the state Capitol building represented an unconstitutional government endorsement of religion. Orden argued this violated the First Amendment's establishment clause, which prohibits the government from passing laws "respecting an establishment of religion."

RESULT: In 5-4 decision, the Court held that the establishment clause did not bar the monument on the grounds of Texas' state Capitol building. The plurality deemed the Texas monument part of the nation's tradition of recognizing the historical meaning of the Ten Commandments. Though the Commandments are religious, the plurality argued, "simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the establishment clause."

**2005: *McCreary County v. American Civil Liberties Union of Ky.*[li]**
CASE: The American Civil Liberties Union (ACLU) sued three Kentucky Counties in federal district court for displaying framed copies of the Ten Commandments in courthouses and public schools. The ACLU argued the displays violated the First Amendment's establishment clause, which prohibits the government from passing laws "respecting an establishment of religion."

RESULT: In a 5-4 opinion, the Court held that the displays violated the establishment clause because their purpose had been to advance religion. In the case of each of the displays, the Court held that an observer would have concluded that the government was endorsing religion. The first display did so by presenting the Ten Commandments in isolation; the second by showing the Commandments along with other religious passages; the third for presenting the Commandments in a presentation of the "Foundations of American Law," an exhibit in which they reached "for any way to keep a religious document on the walls of courthouses."

**2007: *Hein v. Freedom From Religion Foundation*[lii]**
CASE: Shortly after taking office, President Bush created by executive order the Office of Faith-Based and Community Initiatives, a program aimed at allowing religious charitable organizations to compete alongside non-religious ones for federal funding. Another executive order instructed various executive departments to hold conferences promoting the Faith-Based Initiative. The Freedom from Religion Foundation sued, alleging that the conferences favored religious organizations over non-religious ones and thereby violated the Establishment Clause of the First Amendment. The government argued that there was no "Case or Controversy" as required by Article III of the Constitution. According to the Government, the Foundation had no standing to sue because the Foundation had not been harmed in any way by the conferences. The fact that an individual pays taxes to the Federal Government is not normally enough to give the individual standing to challenge a federal program.

RESULT: In a 5-4 decision, the Court ruled that taxpayers do not have standing to bring Establishment Clause challenges against programs funded by the Executive Branch of the Government because "Establishment Clause challenges to the constitutionality of exercises of congressional power under the taxing and spending clause of Art. I, §8."

**2014: *Town of Greece v. Galloway*[liii]**
CASE: In 2008, Americans United for Separation of Church and State sued the town of Greece, New York on behalf of two local residents because they were offended at the prayers being offered at public meetings. They claimed the town violated the Constitution because many of the citizens who volunteered chose to say Christian prayers and demanded that the town censor those prayers to eliminate their distinctly Christian nature.

RESULT: In a 5-4 decision, the Court ruled that Americans are free to pray according to their own beliefs at public meetings.

**2015: *Reed v. Town of Gilbert*[liv]**
CASE: Pastor Clyde Reed of Good News Community Church relied on small signs pointing people to his services since his small congregation often had to meet at different locations such as public schools. But according to the town of Gilbert, Arizona, the church signs could only be six square feet, displayed for no more than 14 hours, and limited to four per property. By comparison,

a political sign could be up to 32 square feet and displayed for months at a time, and an ideological sign could be displayed indefinitely with no limit to how many could be posted.

RESULT: In a unanimous decision, the Court found that Gilbert had violated the Free Speech rights of the Good News Community Church by discriminating against their speech. Churches throughout the country should be able to communicate to the public on the same terms as other organizations, political parties, or businesses.

**2018: *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*[lv]**
CASE: In July 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop in Lakewood, CO and requested that its owner, Jack C. Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages.

Craig and Mullins filed charges of discrimination with the Colorado Civil Rights Division, alleging discrimination based on sexual orientation under the Colorado Anti-Discrimination Act (CADA), §§ 24-34-301 to -804, C.R.S. 2014. After the Division issued a notice of determination finding probable cause, Craig and Mullins filed a formal complaint with the Office of Administrative Courts alleging that Masterpiece discriminated against them in a place of public accommodation in violation of CADA.

RESULT: In a 7-2 decision, the Court ruled on narrow grounds that the Commission did not employ religious neutrality, violating Masterpiece owner Jack Phillips's rights to free exercise, and reversed the Commission's decision. The Court did not rule on the broader intersection of anti-discrimination laws, free exercise of religion, and freedom of speech, due to the complications of the Commission's lack of religious neutrality.

**2019: *American Legion v. American Humanist Association (Bladensburg Cross Case)*[lvi]**
CASE: In Bladensburg, Maryland part of a memorial park honoring veterans is a 40-foot tall cross which is the subject of this litigation. Construction on the cross began in 1918, and it was widely described using Christian terms and celebrated in Christian services. In 1961, Maryland-National Capital Park and

Planning Commission acquired the cross and the land, as well as the responsibility to maintain, repair, and otherwise care for the cross. The Commission has spent approximately $117,000 to maintain and repair the cross, and, in 2008, it set aside an additional $100,000 for renovations.

Several non-Christian residents of Prince George's County, Maryland, expressed offense at the cross, which allegedly amounts to governmental affiliation with Christianity.

RESULT: In a 7-2 decision, the Court declared the Bladensburg Cross does not violate the Establishment Clause. The Court explained that, although the cross originated as a Christian symbol, it has also taken on secular meaning. In particular, the cross became a symbol of World War I as evidenced by its use in the present controversy. The "Lemon Test," which the Court first articulated in 1971 as a way to discern Establishment Clause violations, does not serve its intended purpose, particularly as applied to religious symbols or monuments. Thus, when the question arises over whether to keep a religious monument in place, as opposed to a question whether to put up a new one, there should be a presumption that the monument is constitutional.

Applying this presumption rather than the "Lemon Test," the Court found the Bladensburg Cross does not violate the Establishment Clause because it has historical importance beyond its admittedly Christian symbolism.

**2021: *Fulton v. City of Philadelphia*[lvii]**
CASE: In March 2018, the City of Philadelphia barred Catholic Social Services (CSS) from placing children in foster homes because of its policy of not licensing same-sex couples to be foster parents. CSS sued the City of Philadelphia, asking the court to order the City to renew their contract. CSS argued that its right to free exercise of religion and free speech entitled it to reject qualified same-sex couples because they were same-sex couples, rather than for any reason related to their qualifications to care for children.

RESULT: In a unanimous judgment, the Court ruled that the City's refusal due to the agency's same-sex couple policy violated the Free Exercise Clause.

**2021: *Thomas More Law Center v. Bonta*[lviii]**
CASE: California demanded that the Thomas More Law Center (TMLC), a nonprofit law firm, turn over the names and addresses of its top donors to the State Attorney General's Office. Opponents argued that such a demand

was dangerous, unnecessary, and uncalled for. Nonprofits like TMLC haven't done anything wrong, and the California Attorney General's Office has a reputation for leaking confidential records online, which would expose TMLC's donors to intimidation, death threats, and hate mail from its ideological opponents.

RESULT: In a 6-3 decision, the Court found that California's donor disclosure regulation violates the First Amendment rights of charities and their supporters. Every American should be free to peacefully support causes they believe in without fear of harassment or intimidation.

**2022: *Shurtleff v. Boston*[lix]**

CASE: The City of Boston owns and manages three flagpoles in front of City Hall, the seat of Boston's municipal government. Ordinarily, the City raises the United States Flag and the POW/MIA Flag on one flagpole, the Commonwealth of Massachusetts Flag on the second flagpole, and its own flag on the third flagpole. Upon request and after approval, the City will occasionally fly another flag for a limited period of time instead of its own flag.

Gregory T. Rooney, Commissioner of Boston's Property Management Department, reviews applications for flag-raising events to ensure the flag is consistent with the City's message, policies, and practices. The City has approved 284 flag-raising events over a 12-year period, and Rooney had never denied a flag-raising application.

Camp Constitution is an organization that seeks "to enhance the understanding of the country's Judeo-Christian moral heritage" and applied to fly a "Christian flag" for its event. Rooney denied Camp Constitution's flag-raising request, finding it was the first time any entity or organization had requested to fly a religious flag.

RESULT: In a unanimous decision, the Court ruled that the City of Boston violated the First Amendment by denying Shurtleff's application to fly the flag.

**2023: 303 Creative LLC v. Elenis[lx]**

CASE: Lorie Smith is the owner and founder of a graphic design firm, 303 Creative LLC. She wants to expand her business to include wedding websites. However, she opposes same-sex marriage on religious grounds so does not

want to design websites for same-sex weddings. She wants to post a message on her own website explaining her religious objections to same-sex weddings.

The Colorado AntiDiscrimination Act ("CADA") prohibits businesses that are open to the public from discriminating on the basis of numerous characteristics, including sexual orientation. The law defines discrimination not only as refusing to provide goods or services, but also publishing any communication that says or implies that an individual's patronage is unwelcome because of a protected characteristic. Even before the state sought to enforce CADA against her, Smith and her company challenged the law in federal court, alleging numerous constitutional violations.

RESULT: In a 6-3 decision, the Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees.

**2023: Groff v. DeJoy**[lxi]

CASE: Gerald Groff is a Christian and U.S. Postal Service worker. He refused to work on Sundays due to his religious beliefs. USPS offered to find employees to swap shifts with him, but on numerous occasions, no co-worker would swap, and Groff did not work. USPS subsequently fired him. Groff sued USPS under Title VII of the Civil Rights Act of 1964, claiming USPS failed to reasonably accommodate his religion because the shift swaps did not fully eliminate the conflict.

RESULT: In a unanimous decision, the Court declined to overturn a key 1977 precedent that said employers can deny accommodations for an employee's religious practices if the request imposes more than a "de minimis," or minimal, cost on the business.

But it set aside the "de minimis" standard set more than 45 years ago and laid out a "clarified standard" for lower courts to apply to determine when, under Title VII of the Civil Rights Act, an employee's proposed religious accommodation imposes an undue hardship on the employer's business to decide.

# Personal Notes

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# The Lutheran Center for Religious Liberty

The Lutheran Center for Religious Liberty (LCRL) is a religious liberty organization in Washington, D.C. The LCRL provides input, education, advice, advocacy, and resources in the areas of life, marriage and religious liberty and seeks to engage in discussions in Washington, D.C., to establish partnerships and resources in our nation's Capital for the sake of our churches, schools, universities, and seminaries.

The LCRL is in D.C. to be an ENCOURAGING support to those who are already working very hard on the Hill to protect our religious Liberty, to protect and promote the sanctity of life, to guard the basic protections for traditional marriage, to promote the value of private and parochial education.

The LCRL is in D.C. to be an EDUCATING resource for our Churches, Schools, Universities, pastors, and laypeople – Why? Because Christians more and more need be prepared to engage public issues for the sake of the community and the Gospel.

The LCRL is in D.C. to be an ADVOCATE for our Churches, Schools, and Universities… Why? Because the government is encroaching more and more into the arena of the Church and its work, and Gods' people have a role not only in sharing the Gospel, but in helping society/culture in being humane, civil, and temporally just. (See Jeremiah 29:11ff)


The Lutheran Center for Religious Liberty

www.LCRLfreedom.org

# End Notes

[i] "Reynolds v. United States," accessed May 30, 2023, https://www.mtsu.edu/first-amendment/article/493/reynolds-v-united-states#:~:text=In%20Reynolds%20v.,of%20religion%20is%20not%20absolute.

[ii] "Davis v. Beason," accessed May 30, 2023, https://en.wikipedia.org/wiki/Davis_v._Beason

[iii] "Obergefell v. Hodges," accessed May 30, 2023, https://en.wikipedia.org/wiki/Obergefell_v._Hodges

[iv] "Roe v. Wade," accessed May 30, 2023, https://www.oyez.org/cases/1971/70-18

[v] "Harris v. McRae," accessed May 30, 2023, https://www.oyez.org/cases/1979/79-1268

[vi] "Bowen v. Kendrick," accessed May 30, 2023, https://www.oyez.org/cases/1987/87-253

[vii] "Cruzan by Cruzan v. Director, Missouri Department of Health," accessed May 30, 2023, https://www.oyez.org/cases/1989/88-1503

[viii] "Washington v. Glucksberg," accessed May 30, 2023, https://en.wikipedia.org/wiki/Washington_v._Glucksberg

[ix] "Vacco v. Quill," accessed May 30, 2023, https://www.oyez.org/cases/1996/95-1858

[x] "National Institute of Family and Life Advocates (NIFLA) v. Becerra," accessed May 30, 2023, https://adflegal.org/us-supreme-court-wins

[xi] "March for Life Education and Defense Fund v. California," accessed May 30, 2023, https://adflegal.org/us-supreme-court-wins#cases-won

[xii] "Dobbs v. Jackson Women's Health Organization," accessed May 30, 2023, https://www.oyez.org/cases/2021/19-1392

[xiii] "Meyer v. State of Nebraska," accessed May 30, 2023, https://www.oyez.org/cases/1900-1940/262us390

[xiv] "Everson v. Board of Education of the Township of Ewing," accessed May 30, 2023, https://www.oyez.org/cases/1940-1955/330us1
[xv] "Illinois ex rel. McCollum v. Board of Education," accessed May 30, 2023, https://www.oyez.org/cases/1940-1955/333us203

[xvi] "Engel v. Vitale," accessed May 30, 2023, https://www.oyez.org/cases/1961/468

[xvii] "School District of Abington Township, Pennsylvania v. Schempp," accessed May 30, 2023, https://www.oyez.org/cases/1962/142

[xviii] "Epperson v. Arkansas," accessed May 30, 2023, https://www.oyez.org/cases/1968/7

[xix] "Lemon v. Kurtzman," accessed May 30, 2023, https://www.oyez.org/cases/1970/89

[xx] "Wisconsin v. Yoder," accessed May 30, 2023, https://www.oyez.org/cases/1971/70-110

[xxi] "Stone v. Graham," accessed May 30, 2023, https://www.oyez.org/cases/1980/80-321

[xxii] "Mueller v. Allen," accessed May 30, 2023, https://www.oyez.org/cases/1982/82-195

[xxiii] "Aguilar v. Felton," accessed May 30, 2023, https://www.oyez.org/cases/1984/84-237

[xxiv] "Board of Education of Westside Community Schools v. Mergens," accessed May 30, 2023, https://www.oyez.org/cases/1989/88-1597

[xxv] "Lee v. Weisman," accessed May 30, 2023, https://www.oyez.org/cases/1991/90-1014

[xxvi] "Agostini v. Felton," accessed May 30, 2023, https://www.oyez.org/cases/1996/96-552

[xxvii] "Santa Fe Independent School District v. Doe," accessed May 30, 2023, https://www.oyez.org/cases/1999/99-62

[xxviii] "Mitchell v. Helms," accessed May 30, 2023, https://www.oyez.org/cases/1999/98-1648

[xxix] "Zelman v. Simmons-Harris," accessed May 30, 2023, https://www.oyez.org/cases/2001/00-1751

[xxx] "Arizona Christian School Tuition Organization v. Winn," accessed May 30, 2023, *https://www.oyez.org/cases/2010/09-987*
[xxxi] "Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission," accessed May 30, 2023, *https://www.oyez.org/cases/2011/10-553*

[xxxii] "Trinity Lutheran Church of Columbia, Inc. v. Comer," accessed May 30, 2023, *https://www.oyez.org/cases/2016/15-577*

[xxxiii] "Espinoza v. Montana Department of Revenue," accessed May 30, 2023, *https://www.oyez.org/cases/2019/18-1195*

[xxxiv] "Our Lady of Guadalupe School v. Morrissey-Berru," accessed May 30, 2023, *https://www.oyez.org/cases/2019/19-267*

[xxxv] "Kennedy v. Bremerton School District," accessed May 30, 2023, *https://www.oyez.org/cases/2021/21-418*

[xxxvi] "Carson v. Makin," accessed May 30, 2023, *https://en.wikipedia.org/wiki/Carson_v._Makin*

[xxxvii] "Biden v. Nebraska," accessed July 2, 2023, https://www.oyez.org/cases/2022/22-506 and "National Constitution Center," accessed July 2, 2023, https://constitutioncenter.org/blog/significant-supreme-court-cases-in-the-2022-2023-term

[xxxviii] "Students for Fair Admissions v. Harvard (consolidated with Students for Fair Admissions v. University of North Carolina)," accessed July 2, 2023, https://www.lwv.org/legal-center/students-fair-admissions-v-harvard-consolidated-students-fair-admissions-v-university#:~:text=On%20June%2029%2C%202023%2C%20in,Clause%20of%20the%20Fourteenth%20Amendment.

[xxxix] "Watson v. Jones," accessed May 30, 2023, *https://en.wikipedia.org/wiki/Watson_v._Jones*, and *https://www.mtsu.edu/first-amendment/article/180/watson-v-jones*

[xl] "Cantwell v. Connecticut," accessed May 30, 2023, *https://www.oyez.org/cases/1940-1955/310us296*

[xli] "Sherbert v. Verner," accessed May 30, 2023, *https://www.oyez.org/cases/1962/526*

[xlii] "Trans World Airlines, Inc. v. Hardison," accessed May 30, 2023, *https://en.wikipedia.org/wiki/Trans_World_Airlines,_Inc._v._Hardison*

[xliii] "McDaniel v. Paty," accessed May 30, 2023, https://www.oyez.org/cases/1977/76-1427

[xliv] "Marsh v. Chambers," accessed May 30, 2023, https://www.oyez.org/cases/1982/82-23

[xlv] "Lynch v. Donnelly," accessed May 30, 2023, https://www.oyez.org/cases/1983/82-1256

[xlvi] "Estate of Thornton v. Caldor, Inc.," accessed May 30, 2023, https://www.oyez.org/cases/1984/83-1158

[xlvii] "Goldman v. Weinberger," accessed May 30, 2023, https://www.oyez.org/cases/1985/84-1097

[xlviii] "County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter," accessed May 30, 2023, https://www.oyez.org/cases/1988/87-2050

[xlix] "Capitol Square Review and Advisory Bd. v. Pinette," accessed May 30, 2023, https://www.oyez.org/cases/1994/94-780

[l] "Van Orden v. Perry," accessed May 30, 2023, https://www.oyez.org/cases/2004/03-1500

[li] "McCreary County v. American Civil Liberties Union of Ky.," accessed May 30, 2023, https://www.oyez.org/cases/2004/03-1693

[lii] "Hein v. Freedom From Religion Foundation," accessed May 30, 2023, https://www.oyez.org/cases/2006/06-157

[liii] "Town of Greece v. Galloway," accessed May 30, 2023, https://adflegal.org/us-supreme-court-wins#cases-won

[liv] "Reed v. Town of Gilbert," accessed May 30, 2023, https://adflegal.org/us-supreme-court-wins#cases-won

[lv] "Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission," accessed May 30, 2023, https://www.oyez.org/cases/2017/16-111

[lvi] "The American Legion v. American Humanist Association," accessed May 30, 2023, https://www.oyez.org/cases/2018/17-1717

[lvii] "Fulton v. City of Philadelphia," accessed May 30, 2023, https://www.oyez.org/cases/2020/19-123

[lviii] "Thomas More Law Center v. Bonta," accessed May 30, 2023, *https://adflegal.org/us-supreme-court-wins#cases-won*

[lix] "Shurtleff v. Boston," accessed May 30, 2023, *https://www.oyez.org/cases/2021/20-1800*

[lx] "303 Creative LLC v. Elenis," accessed July 2, 2023, https://www.oyez.org/cases/2022/21-476 and "National Constitution Center," accessed July 2, 2023, https://constitutioncenter.org/blog/significant-supreme-court-cases-in-the-2022-2023-term

[lxi] "Groff v. DeJoy," accessed July 2, 2023, https://www.oyez.org/cases/2022/22-174 and "National Constitution Center," accessed July 2, 2023, https://constitutioncenter.org/blog/significant-supreme-court-cases-in-the-2022-2023-term