Religious Freedom in Focus:
Breaking Down the Supreme Court's Recent Rulings

I. U.S. SUPREME COURT CASES

A. *Olivier v. City of Brandon*, No. 24-993

1. Issue
   Can a street preacher seek prospective protection in federal court from a city law under which he has previously been convicted but never incarcerated (so never had access to habeas corpus relief)?

2. Relevant Facts
   Gabriel Olivier is a Christian who feels called to share the gospel with his fellow citizens. After being arrested and fined for violating an ordinance targeting "protests" outside a public amphitheater, Olivier brought a § 1983 suit under the First and Fourteenth Amendments to declare the ordinance unconstitutional and enjoin its enforcement against him in the future. Olivier was never a prisoner, never had access to habeas relief, and in his federal action did not seek to invalidate his prior conviction. He sought an injunction preventing the city from interfering with his First Amendment right to evangelize by applying its ordinance against him in the future.

3. Proceedings/Decision Below
   The Fifth Circuit, applying its precedent construing the U.S. Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), held that Olivier's prior conviction barred his § 1983 suit because even the prospective relief it seeks would necessarily undermine his prior conviction. The Fifth Circuit acknowledged the "friction" between its decision and those of the Supreme Court and other circuits. Over vigorous dissents, the Fifth Circuit denied rehearing *en banc* by one vote.

4. Questions Presented

   a. Whether the Supreme Court's decision in *Heck v. Humphrey* bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional.

   b. Whether the *Heck* decision bars prospective relief even where plaintiff never had access to federal habeas relief.

5. Holding
   On March 20, 2026, the Court held that *Heck* does not bar a federal suit for prospective injunctive relief where the plaintiff was never a prisoner, never had access to habeas corpus, and is not challenging his prior state court conviction.

6. Reasoning
   The Court gave the green light for Olivier's challenge in federal court to the ordinance limiting protests and demonstrations around the city's amphitheater to a designated area when events are scheduled at the amphitheater. In a unanimous decision written by Justice Elena Kagan, the Court found that *Heck* does not bar Olivier's federal suit because he is only seeking an injunction to prevent future enforcement of the ordinance. The fact that a victory in his suit would mean that his prior state conviction was unconstitutional does not mean that the federal lawsuit is barred.

   Olivier isn't challenging the validity of his conviction to get relief [e.g., expungement] or to seek monetary damages, Justice Kagan wrote. Instead, he's trying to protect himself from being prosecuted again for the same crime: "This suit, after all, is not about what Olivier did in the past, and depends on no proof addressed to his prior conviction," Justice Kagan said. "Given that Olivier asked for only a forward-looking remedy—an injunction stopping officials from enforcing the city ordinance in the future—his suit can proceed, notwithstanding his prior conviction."

   According to the opinion, the language in *Heck* "swept a bit too broad." The Court's concern in that case was with suits that "require[] looking back to conduct involved in a prior conviction, and offering contradictory proof," rather than with a suit, like Olivier's, that is "future-oriented—even if, as a kind of byproduct, success in it shows that something past should not have occurred." The *Heck* Court did not consider such a suit, and the *Heck* language was not meant to address it.

   To hold otherwise, said Justice Kagan, would be to force Oliver to choose between knowingly violating the ordinance and "risk[ing] another prosecution" or "forgo[ing] speech he believes is constitutionally protected." The Court chose not to ask Olivier to make that choice, saying "[h]is suit to enjoin the ordinance, so he can return to the amphitheater, may proceed."

7. Practical Significance
   The decision in *Olivier* bolsters the principle that enforcement of protest ordinances and designated protest area restrictions is subject to First Amendment scrutiny. The long-term impacts of this decision include:

   a. Weakening, if not eliminating, the *Heck* Bar on Future-Oriented Claims: The Court ruled that *Heck v. Humphrey*—which prohibits §1983 suits that imply the invalidity of a conviction—does not apply to suits seeking purely prospective relief (an injunction against future enforcement).

   b. Preventing Permanent Silencing of Speakers: The decision ensures that a single, past conviction does not permanently prevent a speaker from challenging a law they believe is unconstitutional. It stops local governments from using past enforcement to insulate potentially unconstitutional ordinances from future scrutiny.

c. Increased Scrutiny of Local Protest Ordinances: Municipalities may face more federal litigation regarding "designated protest areas," noise-control ordinances, or buffer zones.

d. Heightened Need for Clear, Content-Neutral Rules: Law enforcement and local officials are advised to ensure that protest-related rules are drafted and enforced in a clear, content-neutral manner and that reasons for arresting or moving speakers are thoroughly documented to survive future, forward-looking legal challenges.

B. *Chiles v. Salazar*, No. 24-539

1. Issue
   The central issue was whether Colorado's 2019 "Minor Conversion Therapy Law" (MCTL), which prohibits state-licensed mental health professionals from engaging in "conversion therapy" with minors, violates the Free Speech Clause as applied to Kaley Chiles, a licensed counselor who engages only in talk therapy and has patients who come to her asking for help to eliminate unwanted sexual attractions, change sexual behaviors, or to grow in the experience of harmony with their bodies.

2. Relevant Facts
   The MCTL prohibits licensed mental health professionals from providing "conversion therapy," defined broadly as any effort to change a minor's sexual orientation or gender identity, while allowing counseling that affirms or supports a minor's existing identity. Consequences of violating the MCTL include fines and potential suspension or loss of a license. (The MCTL expressly does not apply to counselors when engaged in the practice of "religious ministry," though this exemption was not at issue in the case.)

   Ms. Chiles is a licensed counselor in Colorado. She provides only talk therapy; she does not prescribe medicines, perform physical treatments, or engage in "coercive or aversive practices." Further, she does not seek to "impose her values or beliefs" on clients. Out of respect for her clients' right of self-determination, she provides counseling only after ascertaining their goals. So, for patients who are content with their sexual orientation or gender identity, Ms. Chiles does not try to change their attractions, behavior, or identity. But for clients who come to her requesting help to reduce unwanted same-sex attraction or lack of harmony with their bodies, Ms. Chiles provides counseling in furtherance of those goals.

3. Proceedings/Decisions Below
   After the law went into effect, Ms. Chiles brought a pre-enforcement challenge, arguing the MCTL violates the Free Speech Clause and Free Exercise Clause of the First Amendment, both facially and as applied to her. The district court denied Ms. Chiles's motion for a preliminary injunction and the Court of Appeals for the Tenth Circuit affirmed that ruling in a 2-1 decision.

   As to Ms. Chiles's Free Speech claims, both lower courts held the MCTL is a permissible regulation of professional conduct (medical treatments) that only

incidentally burdens speech, meaning it is subject only to rational basis review (and survives). On this issue, the Tenth Circuit aligned with the Ninth Circuit, splitting from the Third and Eleventh Circuits. Turning to Ms. Chiles's Free Exercise claims, the district court and the Tenth Circuit both concluded the MCTL is neutral and generally applicable, likewise triggering only rational basis review (under *Employment Division v. Smith*, 494 U.S. 872 (1990)).

4. Question(s) Presented in Cert. Grant
   Ms. Chiles sought Supreme Court review only as to her Free Speech claim. The petition for certiorari framed the question as: "Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the Free Speech Clause." The Supreme Court's syllabus described the purpose of the cert. grant as resolving "a circuit conflict over how the First Amendment interacts with laws like Colorado's [MCTL] when those laws are applied to talk therapy." The Court ultimately described the question presented as a "narrow one" insofar as it was focused only on Ms. Chiles's pure talk therapy; there was no dispute that the MCTL has some constitutionally sound applications.

5. Holding
   The Court, in an 8-1 opinion by Justice Gorsuch, held that, as applied to Ms. Chiles's talk therapy, Colorado's MCTL regulates protected speech based on content and viewpoint and therefore must be evaluated under strict scrutiny, not treated as a mere regulation of professional *conduct*. The Court reversed the judgment of the Tenth Circuit and, without actually applying strict scrutiny, remanded for further proceedings. Justice Kagan, joined by Justice Sotomayor, authored a concurring opinion stating that if Colorado had instead enacted content-based *but viewpoint-neutral* law, the case would have been "more difficult."

6. Reasoning
   The majority's analysis launches with an ode to the First Amendment's protections for "the inalienable right of every individual to decide for himself how best to speak." Citing familiar cases like *Reed* and *Rosenberger*, the majority explained that laws restricting speech based on its content (subject matter) are subject to strict scrutiny and laws restricting speech based on the viewpoint expressed are even more "egregious" and "blatant" First Amendment problems. Exceptions are few and narrowly drawn—a law that regulates the content of speech cannot avoid searching review just because it mostly regulates non-expressive conduct. Only two kinds of content-based restrictions can apply to professional speech without triggering strict scrutiny: (1) laws requiring disclosure of factual, noncontroversial information in commercial speech and (2) laws regulating conduct in ways that incidentally sweep in speech.

   Under this framework, the majority concluded that application of the MCTL to Ms. Chiles's talk therapy triggers strict scrutiny because the MCTL regulates the content of her speech, regardless of whether the state labels such speech as "treatment." The majority added that the MCTL goes even further and prescribes the opinions she may and may not express, i.e., the MCTL discriminates based on viewpoint.

The fact that the MCTL's viewpoint regulation only targets licensed healthcare professionals "changes nothing," the majority said, because under *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. 755 (2018) ("*NIFLA*") "professional speech" is not a distinct category of speech subject to diminished protections. The majority rejected Colorado's attempt to categorize the MCTL as a conduct restriction that only incidentally burdens speech, noting that, as far as Ms. Chiles is concerned, speech is all the law regulates. To accept Colorado's argument that the focus ought to be the conduct at which the law is generally aimed would allow the government to silence disfavored speech under all manner of laws. For the speech-incident-to-conduct exception to apply, it is not enough that the law "mostly addresses conduct."

Finally, the majority declined Colorado's invitation to recognize, for the first time, a "long tradition" of permissible content regulation that would encompass the MCTL. The Court explained that Colorado's proffered evidence—historical laws regulating the practice of medicine, requiring informed consent, and permitting medical malpractice suits—cannot be aggregated to support a tradition of broadly proscribing "substandard care" when that involves content-based speech restrictions. Noting that homosexuality was considered a "mental disorder" by the APA and many other medical organizations "not long ago," the majority warned that the state's logic would allow the government to silence any professional speech that deviates from prevailing opinions.

7. Practical Significance
   The decision strengthens First Amendment protections for speech by licensed professionals, reinforcing and extending *NIFLA*'s rejection of "professional speech" as a diminished category. Laws that frame certain counseling or advisory practices as "treatment" but in substance prohibit particular viewpoints are now highly vulnerable to strict scrutiny challenges, whether in mental-health counseling, financial advice, legal representation, or other professional settings.

   The case has particular significance for Christian attorneys. CLS's amicus brief argued that the same logic used to defend so-called conversion-therapy bans—that professional speech can be reclassified as regulable "conduct"—has also been invoked to defend ABA Model Rule 8.4(g), which prohibits "verbal or physical conduct" related to the practice of law that is deemed harassing or discriminatory. The *Chiles* ruling confirms that robust First Amendment protections apply to attorneys and supplies fresh doctrinal support for challenges to state implementations of Model Rule 8.4(g).

   Some states with laws like the MCTL may respond by trying to find new ways to achieve the apparent goals of these laws. For example, a bill was introduced in the Colorado legislature (HB 1322) to create a private cause of action for individuals to sue licensed providers for injuries caused by conversion therapy. As of early May 2026, the bill would have no limitations period for such claims.

C. *First Women's Choice Resource Centers, Inc. v. Davenport*, No. 24-781

1. Issue
   Faith-based pregnancy centers in New Jersey—targeted for their beliefs and advocacy by a state AG who wants to silence them—want their day in federal court to address their clearly pled constitutional claims.

2. Relevant Facts
   Faith-based pregnancy centers in NJ were served with a subpoena from the NJ state AG seeking sensitive donor information, among other things. The AG had waged a PR battle against pregnancy centers, baselessly claiming that they acted deceptively and harmed women. He claimed the investigation was to uncover deceptive practices. Before the state acted to enforce the subpoena, First Choice filed a claim in federal court for state violation of federal civil rights (42 USC §1983), alleging the subpoena violated its First and Fourteenth Amendment rights and seeking a temporary restraining order. First Choice stated that "anonymity is of paramount importance" for its donors and included two declarations from donors and from the executive director specifying the actual harm suffered.

3. Proceedings/Decisions Below
   The New Jersey district court dismissed the §1983 claim as unripe, saying there was no harm until "after the contingent future event" of the AG acting to enforce the subpoena. After that, the AG sought to enforce the subpoena in state court. The state court granted enforcement and denied First Choice's motion to quash, saying the constitutional issues were not ripe. The Third Circuit dismissed the federal appeal as moot, because the active state enforcement action made the issue ripe. The district court, however, then determined once again that the §1983 claim was not ripe "given the nature of the New Jersey subpoena enforcement proceedings." 2024 WL 4756044 (D.N.J., Nov 12, 2024). It said the legal issue was not "sufficiently concrete for decision" based on the *Smith & Wesson* series of cases in the Third Circuit that indicated a challenge to a subpoena was not ripe until the state court ordered compliance with a contempt threat, despite the threat of res judicata barring a future federal suit. *Id.* The Third Circuit affirmed that the case was not ripe, saying "First Choice's current affidavits do not yet show enough of an injury" and concluding that "the state court will adequately adjudicate First Choice's constitutional claims." 2024 WL 5088105 (3d Cir. Dec 12, 2024).

4. Question Presented
   Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court?

5. Holding
   In a unanimous decision, the Court held that First Choice has Article III standing to sue a state AG in federal court under §1983 because it has "established a present injury to its First Amendment associational rights" and that the case could move forward in federal court.

6. Reasoning
   The Supreme Court decided the case on standing doctrine, focusing on the "injury in fact" element, finding it met in First Choice's pleadings, and saying the case could proceed. Emphasizing the critical nature of the right of association, the Court said it corresponds to all other First Amendment rights and is necessary to effectively live them out. The Court pointed out that it has long acknowledged the right of association protects against demands for private donor information. The Court also described the importance of allowing §1983 claims to proceed in federal court because Congress' express goal was to ensure "a federal forum to citizens who claim that state actors have violated their constitutional rights."

   After establishing that a present burden on association is an injury in fact, the Court specifically rejected the AG's arguments. First, it found irrelevant the non-self-executing nature of the subpoena, saying the chill was real because "the value of a sword of Damocles is that it hangs." Second, the claim that injury was speculative because the AG *might* not enforce the subpoena did not "undo the inevitable injury to associational rights" because First Choice alleges "a present injury from the subpoena itself." Third, the Court said it cannot require exhaustion of state court remedies prior to a §1983 claim in federal court because that requirement would "hollow out the statute." Fourth, it rejected the claim that one option for donor privacy was enough to mitigate the claim. The Court said its focus was on whether there was a burden, not on how complete the burden was, saying "A government that takes three limbs but spares the last imposes an injury all the same." Finally, the Court said a promise of a future protective order for donor information did not undo the constitutional burden, saying an "official demand" for the information is enough to chill association and could stifle the expression of dissident views.

7. Practical Significance
   This case clarifies that evidence of present constitutional injuries, properly pled, is adequate to get into court with a §1983 claim. It emphasizes and clarifies that First Amendment harm (particularly in the area of burdens on association rights) is real and actionable for purposes of standing, even when it is caused by government processes and laws that chill, but do not directly and clearly target constitutionally protected activity. This case will be cited by §1983 plaintiffs with First Amendment claims for decades to come, and will help prevent government misuse of its power to stifle disfavored groups.

D. *Landor v. Louisiana Department of Corrections*, No. 23-1197

1. Issue
   May an individual sue a government official in his individual capacity for money damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA")?

2. Facts
   Damon Landor is a faithful Rastafarian. In adherence to his religious beliefs, he abides by the Nazarite Vow (the biblical oath also taken by Samson; see Judges 13:5 and 16:17). A man who takes the Nazarite Vow must not cut his hair (see Numbers 6:5).

Landor did not cut his hair for almost two decades. At the longest point, Landor's locks fell nearly to his knees.

Beginning in August 2020, Landor was incarcerated for five months in three different Louisiana state prisons. State officials at the first two prisons accommodated Landor's religious beliefs, allowing him to wear a "Rastacap" over his long hair.



But on December 28, 2020, three weeks before his ultimate release from prison, Landor was transferred to Raymond Laborde Correctional Center. Landor informed the intake guard that he was a practicing Rastafarian and presented the guard with various legal materials regarding his religious accommodations. These materials included a copy of *Ware v. Louisiana Department of Corrections*, No. 16-31012 (5th Cir. 2017), which held that RLUIPA requires prisons within the jurisdiction of the 5th Circuit Court of Appeals to honor requests by Rastafarians to keep their hair uncut.

The intake guard threw Landor's materials, including the *Ware* decision, in the trash. The guard then summoned the warden, who asked Landor if he had documentation about his religious beliefs from his sentencing judge. Landor lacked that specific documentation but offered to contact his lawyer to obtain those materials. In response, the warden glibly quipped that it was "too late for that." The warden instructed prison guards to escort Landor to another room, where Landor was forcibly handcuffed to a chair. As two guards held Landor down, another individual shaved his head to the scalp.

3. Statute at Issue
RLUIPA applies strict scrutiny ("compelling state interest"/"least restrictive means") to Free Exercise claims against state and local governments when those claims (1) involve land use decisions or (2) are brought by "institutionalized persons" (typically incarcerated prisoners).

   In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), the Supreme Court held that an individual may sue a government official in his individual capacity for damages for violations of the Religious Freedom Restoration Act of 1993 ("RFRA") (which provides strict scrutiny to Free Exercise claims against the federal government). RLUIPA contains "obtain appropriate relief" language identical to that in RFRA.

   The "institutionalized persons" section of RLUIPA was enacted under Congress' authority under the interstate commerce and spending powers of Article I, §8, of the Constitution:

42 U.S. Code § 2000cc-1(b). Scope of application.
This section applies in any case in which —
1. the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
2. the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

4. Proceedings Below
Landor brought suit in federal district court for violation of his rights under RLUIPA. There is no doubt that Louisiana violated RLUIPA because (1) Landor's religious conviction is clearly sincere, and (2) the prison's desire to remove his religiously-compelled dreadlocks did not rise to a compelling interest pursued through least restrictive means. However, both declaratory and injunctive relief (common remedies under the Free Exercise Clause, RFRA, and RLUIPA) were of no use with Landor's head already shaved. The question was reduced to whether RLUIPA authorizes money damages against government officials for the violation.

The district court granted the defendants' motion to dismiss, holding that RLUIPA did not authorize damages suits against officials in their individual capacities. In doing so, the court believed that this case was governed by *Sossamon v. Texas*, 560 F.3d 316 (5th Cir. 2009), affirmed by the Supreme Court in *Sossamon v. Texas*, 563 U.S. 277 (2011) (RLUIPA's "appropriate relief" language does not overcome sovereign immunity to permit awards of money damages against states *qua* states). Note that *Sossamon* dealt with damages from the state itself, not from the individuals who caused the violation of rights.

The Fifth Circuit affirmed the district court. While it condemned Landor's treatment at the hands of prison officials, it found that it was bound by its decision in *Sossaman* to deny individual-capacity damages under RLUIPA. The divided Court of Appeals denied rehearing *en banc*.

5. Question Presented
The question presented is whether an individual may sue a responsible government official in his individual capacity for damages for violations of RLUIPA.

6. Holding and Vote
In a 6-3 decision written by Justice Gorsuch, joined by Chief Justice Roberts and Justices Thomas, Alito, Kavanaugh, and Barrett, the Supreme Court ruled that the remedy of monetary damages against government officials is not available under RLUIPA. Justice Jackson, joined by Justices Sotomayor and Kagan, dissented.

7. Reasoning
To the surprise of many religious freedom advocates, the Court (while never disputing the obvious violation of Landor's religious freedom and of RLUIPA rights) treated RLUIPA as depending on a contract voluntarily entered into, rather than as a prohibition of certain government activities. Since prison officials had never affirmatively agreed to

be subjected to damage awards when they violate RLUIPA, said the Court, those damages were beyond the reach of the spending power of Congress:

> Often, Congress attaches conditions to the funds it distributes. And typically, if a recipient "violates those conditions," Congress may "terminate" its agreement to provide funds. But because the Spending Clause confers no authority to "regulate directly," *South Dakota v. Dole*, 483 U. S. 203 (1987), Congress cannot just dictate whatever other sanctions it might wish for violating conditions found in its Spending Clause legislation. Instead, additional sanctions are permissible only with the "voluntary and knowing" consent of those who must bear them. *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981). . . . To sort out whether consent exists — and thus whether a condition associated with spending legislation is enforceable — we have traditionally turned to contract principles for guidance.

So instead of viewing RLUIPA as a regulation of state and local government, enacted under the enumerated powers of Article I, §8, the Court treated it as a contract offer that must be accepted. And this in spite of the fact that, unlike *South Dakota v. Dole*, Congress in RLUIPA did not condition any grant of federal funds on RLUIPA compliance.

8. Dissent

Justice Jackson introduced her dissent, joined by Justices Sotomayor and Kagan, this way:

> Congress enacted RLUIPA to ensure that state and local prisons respect prisoners' right to religious exercise. Congress might have opted to accomplish this through contracts with the prisons it funds. Instead, it passed a law. . . . Neither respondents nor the Court contests Congress's power to impose RLUIPA's substantive directive accommodating religious freedom. The majority nevertheless adopts the peculiar position that Congress is powerless to create, and a State is powerless to accept, the natural next step: a damages remedy against officials who violate that directive. This severance of rights and remedies is a sleight of hand; it comes by way of the majority's full-throated endorsement of a contract analogy even though what secures the rights at issue is not a contract but a law. Today's decision magically transforms a federal statute into an invitation to be accepted or declined, deemed binding only if each particular defendant has explicitly agreed to be penalized. No matter that laws, as opposed to contracts, don't ordinarily work this way. The trick here is the majority's effortless conflation of law making and agreement making — two different sources of binding authority.

The dissent first addressed the statutory interpretation question: that RLUIPA's "appropriate relief" language clearly authorizes individual money damages, citing *Tanzin*. It then turned to the majority's constitutional argument:

> Stated simply, the Spending Clause contains no direct-consent requirement. The power it grants Congress "is of course not unlimited," *Dole*. But neither is it so cramped as the majority imagines. Most important, it is a power to legislate, not merely to negotiate. And if the Spending Clause falls short, the Necessary and Proper Clause supplies the additional power Congress needs to bind prison officials — state agents whose compliance is critical to RLUIPA's effective implementation.

9. Practical Significance
   Despite RLUIPA, prison officials will sometimes violate prisoners' religious liberty rights in ways that (as in Damon Landor's case) can seem mean-spirited and cruel. A Rastafarian Nazarite whose dreadlocks have been shaved and is now out of prison is in the unusual position of having no remedy at all unless money damages are available. In other contexts (e.g., denial of religious books or Kosher meals), an injunction can at least stop the harm from continuing.

   But in all contexts, the availability of money damages against individual state officials would provide a powerful incentive—probably the most powerful incentive—for those officials to respect religious liberty. It is highly unlikely that Landor's request to keep his dreadlocks would have been met with a trash can and a handcuffed haircut if prison officials had known that they would face personal financial liability for their actions.

   The *Landor* decision gives prison officials a strong incentive to violate prisoners' RLUIPA rights with impunity if the official finds the religious claim unworthy of respect—or perhaps even if the official merely dislikes the prisoner. At worst, if the prisoner finds the resources to litigate the issue, the case may result in an injunction requiring the request to be honored. The nefarious prison official loses nothing by trying.

   This will be particularly true in the case of minority, perhaps unpopular, faiths. Few American prisons will deny an inmate's request for a Bible. Jewish Kosher meals will typically be accommodated. But the claim of a Muslim, Sikh, Rastafarian, Santerian, or Native American religionist (to name just a few) may find little sympathy within prison walls.

II. CASES PERCOLATING UP

A. *St. Mary Catholic Parish v. Roy* (cert. granted), No. 25-581

1. Facts and Procedural History
   Colorado's so-called universal preschool program pays for families to send their children to the preschool of their choice, public or private. To participate, preschools must ensure all families have an "equal opportunity" to enroll regardless of race, religious affiliation, sexual orientation, gender identity, income level, or disability. Colorado nonetheless permits numerous exemptions from this requirement, both categorical and discretionary, allowing preschools to admit only "children of color," "gender-nonconforming children," "the LGBTQ community," low-income families, and

children with disabilities. *But Colorado excludes Catholic preschools because they admit only families who support Catholic beliefs, including on sex and gender.*

The Tenth Circuit upheld Colorado's decision to exclude Catholic preschools. Applying *Employment Division v. Smith*, it held that Colorado's secular exemptions and discretion did not undermine general applicability. In so doing, the court sided with the minority position in a 7-4 split among federal circuits and state supreme courts over what kinds of exemptions and discretion undermine general applicability. The court also eschewed *Carson v. Makin*, concluding that its rule was inapplicable because Colorado's exclusion was not "on the explicit basis" of religion.

2. Questions Presented

   a. Whether proving a lack of general applicability under *Employment Division v. Smith* ("*Smith*") requires showing unfettered discretion or categorical exemptions for identical secular conduct.

   b. Whether *Carson v. Makin* displaces the rule of *Smith* only when the government explicitly excludes religious people and institutions.

   c. The Court declined to take up the third question: whether to reconsider *Smith*.

B. *Grand v. City of University Heights*, No. 25-965 (cert. granted)

1. Facts and Procedural History[1]

   "Petitioner Daniel Grand, a devout Orthodox Jew, sought to engage prayer with a . . gathering of at least ten adult males, in a single room of his residence . . on the Jewish Sabath and High Holidays. These gatherings were entirely non-commercial, involved no structural changes to the home, no signage, no amplification, and no disruption to the neighborhood beyond ordinary residential activity. Notably, because Orthodox Jews do not drive on the Sabath or High Holidays, Grand's plan involved no possible traffic issues." But the City Mayor responded with a heavy hand, issuing a Cease And Desist Order. Branding Grand's religious exercise as creating an illegal "religious place of assembly" under the City's zoning ordinance, the City demanded that Grand cease any use of his home for group religious activities until he had received a special use permit (SUP) from the City's planning commission. Grand applied but then withdrew his SUP application because he did not want to submit to a second (and inevitably hostile) public hearing and because he realized that the permit would require him to convert his home into a house of worship, and then he could no longer live there. Grand filed in federal court under RLUIPA and many other claims. The district judge dismissed Grands claims, granting the City officials either summary judgment or dismissal for lack of subject matter jurisdiction (because the process had not been finalized and so the case was not ripe for review). On appeal, the Sixth Circuit, because Grand had available a zoning

[1] Quoting in part from Petition For Writ of Certiorari.

process to determine his rights, held his Free Exercise claims were never "ripe" for review.

2. Question Presented
   Whether the First Amendment's established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by [*Williamson Cnty. Planning v. Hamilton Bank*, 473 U.S. 172 (1985)]'s land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

C. *Polk v. Montgomery County Public Schools* (cert. pending)

1. Facts and Procedural History
   Kimberly Ann Polk worked as a substitute teacher for Montgomery County Public Schools. She has alleged that the Montgomery County Board of Education's Guidelines for Student Gender Identity violate her First Amendment rights to free exercise and free speech. They require her to affirm she will use students' "preferred pronouns" and that she will not discuss any student's "gender identity" with the student's parents. She also brought a Title VII failure to accommodate claim. She filed a preliminary injunction motion; the defendants countered with a motion to dismiss, and the district court granted the motion to dismiss as to the free exercise and free speech claims and denied the preliminary injunction as to the remaining Title VII accommodation claim. Polk appealed to the Fourth Circuit the denial of the preliminary injunction. The Fourth Circuit found jurisdiction to consider the First Amendment claims because they were necessary to decide in relation to the preliminary injunction decision. It then affirmed the dismissal of the free exercise claim based on *Smith* because the policy was neutral and generally applicable and reasonable. It affirmed the dismissal of the free speech claim based on *Garcetti*, because statements made to students and parents are part of job duties. Polk is petitioning for cert.

2. Questions Presented

   a. When public schools try to force teachers, over their religious objections, to use pronouns inconsistent with a student's biological sex and to hide from parents information about their child's gender expression at school, does *Smith* apply and foreclose heightened scrutiny under the Free Exercise Clause?

   b. Do public schools violate the Free Speech Clause when they compel objecting teachers to adhere to such a school policy?

D. *General Conference of Seventh-day Adventists v. Horton* (4th Cir.)

1. Facts and Procedural History
   The Seventh-day Adventist Church has over 22 million members. Its faith is evident in all that it does, including in its workplace culture and environment. The Church also expects its employees to uphold and model the faith in every aspect of their lives. This

includes following Seventh-day Adventist teachings on modest dress, marriage and sexuality, healthful living, and observance of the Saturday Sabbath.

In 2023, the Maryland Supreme Court reinterpreted the Maryland Fair Employment Act, significantly limiting the law's religious exemption that had previously allowed Seventh-day Adventist organizations to hire only those who share their faith. Now, only employees who directly advance the Church's core mission can be hired based on shared beliefs. And courts can now decide what the Church's core missions are. As a result, the Church's long-standing hiring practices conflict with Maryland law, jeopardizing the Church's ability to fulfill its religious mission.

The Church filed suit in the U.S. District Court for the District of Maryland arguing that, as a religious ministry, the General Conference must have the freedom to ensure all their employees share and uphold the Church's beliefs; that this new interpretation of Maryland law requires courts to delve into complex questions about what the Church's core mission is and which employees are essential to advancing that mission—matters that are deeply tied to the Church's beliefs and where the First Amendment forbids courts to venture. After the judge denied the Church's motion for preliminary injunction and dismissed four of its seven federal constitutional claims, the Church appealed to the Fourth Circuit.

2. Questions Presented

    a. May a church require all its employees to be members in good standing of that church?

    b. Where a state supreme court narrowly construes a state antidiscrimination law's religious employer exemption so that it only exempts religious employers as to jobs that would qualify for the First Amendment ministerial exception, does that statute (as narrowly rewritten by the state supreme court) violate the Free Exercise, Association and/or Assembly guarantees of the First Amendment and entitle the church to apply its religious requirement to all its employees?

E. *U.S. Conference of Catholic Bishops v. EEOC* (5th Cir.)

1. Facts and Procedural History
The Pregnant Worker's Fairness Act does not mention abortion. Neither did any legislator when Congress passed the Act in 2022. Despite the Act's text, purpose (to accommodate pregnancy, not end it), and history, the EEOC voted 3-2 to issue regulations that force even pro-life organizations to provide paid leave for abortion and to self-censor to avoid interfering with abortion accommodation. Moreover, the EEOC also weakened religious freedom protections, saying the EEOC would only consider these defenses on a "case-by-case" (meaning the potential for onerous discovery and expensive litigation). While ruling that the Act didn't cover "purely elective" abortions, the federal district court interpreted the Act to include "abortions stemming from the underlying treatment of a medical condition related to abortion." This means the Act

could apply in a broad range of situations (physical and mental health somehow stemming from pregnancy) in which Catholic doctrine would oppose abortion. And the court didn't rule for the USCCB on any other cause of action.

2. Question Presented
   Did the EEOC err when it read the Pregnant Workers Fairness Act to impose on U.S. employers a mandate to accommodate with paid leave for their employees to have an abortion?

3. Possible Regulatory Solution
   In July, The Trump Administration's Office of Information and Regulatory Affairs released action items concerning the EEOC that include determining whether having an abortion qualifies as a medical condition under the Act. One item on the commission's agenda is an entry for a proposed rule titled "Revisions to the Pregnant Workers Fairness Act Regulations." According to the agenda, the commission's planned regulatory proposal will revise the Act's language "regarding the interpretation of the words 'pregnancy, childbirth, or related medical conditions.'" The agency estimates a notice of proposed rulemaking will be unveiled around November.

F. *Union Gospel Mission of Yakima v. Brown* (9th Cir rehearing en banc)

1. Facts and Procedural History
   Union Gospel Mission of Yakima (UGM) is a Christian ministry to the poor and homeless. Washington State has on the books the Washington Law Against Discrimination ("WLAD"), RCW § 49.60. UGM alleges that the Free Exercise Clause is violated by WLAD as interpreted by the Washington Supreme Court in *Woods v. Seattle's Union Gospel Mission* (2021), where the Washington Supreme Court held that the religious exemption in WLAD should parallel the ministerial exception recognized by the Supreme Court of the US in *Hosanna Tabor* (2012) and *Our Lady of Guadalupe* (2020). The district court dismissed on standing (no injury yet), but the Ninth Circuit reversed. On remand, UGM obtained a preliminary injunction enjoining defendants from enforcing (including through investigations) the WLAD against it for preferring and hiring only coreligionists for its non-ministerial positions. The state attorney general appealed that decision, and the Ninth Circuit ruled for UGM. The new state AG petitioned for reconsideration en banc.

2. Question Presented
   Does the state's employment antidiscrimination law trigger—and fail—strict scrutiny under the Free Exercise Clause as applied to a faith-based ministry that requires all staff (not just those deemed "ministers" by the state) to be of their faith?

G. *Hall v. Fleming* (cert. petition coming)

1. Facts and Procedural History
   Students enrolled at religious colleges and universities in Virginia are eligible to participate in a state tuition grant program, unless they are majoring in religious training

or theological education. Plaintiff attends Liberty University and challenges her disqualification from the state program because she is majoring in "Music and Worship."

2. Question Presented
   Whether the Supreme Court should overrule *Locke v. Davey* (2004) where the Supreme Court held that the Free Exercise clause was not violated by a Washington tuition program that disqualified majors headed toward a theological profession.