2026 Religious Freedom Update Workshop

Developments in the Practice of Religious Freedom Law in 2025-26
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Introduction: As a nonpartisan organization, CLS has long worked with groups across the political and religious spectrum to protect religious freedom and life. This past year has been no different as CLS has worked with a variety of organizations to defend religious freedom. This workshop, which primarily focuses on the federal and state governments' actions affecting religious freedom (life issues are more directly addressed in other workshops), will update participants on a variety of actions in the Federal Courts, Congress, and the Executive branch during 2025 and 2026.

My goal for this time is not to do a deep dive into any one topic, since there are many angles and nuances involved in Religious Freedom cases and topics, but to touch on these important issues and to equip and encourage some of you non-experts so that you can grow in awareness of how you might better serve, whether it is on the board of a religious school or adoption agency, or as an engaged member of your community.

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COURTS

Supreme Court Cases of note: (listed here, but not covered in detail because they were discussed in detail in the Plenary Session)

1. *Olivier v. City of Brandon, Mississippi* (2026)
    a. Facts: a street preacher sued to block future enforcement of an ordinance that he had previously been convicted of violating, seeking only prospective injunctive relief, not the overturn of his conviction.

b. Holding: The Supreme Court, 9-0, reversed the lower court's decision that *Heck v. Humphrey* prevented his suit from moving forward.
c. Reasoning: The Court said his suit escaped the "Heck bar" because it involved only a forward looking remedy.
d. Implications: This is helpful clarification, particularly for civil challenges involving First Amendment concerns, which often involve only injunctive relief.

2. *Chiles v. Salazar* (2026)
   a. Facts: First Amendment challenge to the 2019 Colorado law prohibiting licensed counselors from doing "conversion therapy" with minors, Colo. Rev. Stat. §12-245-224(1)(t)(V), brought by a counselor who rejects aversive and physical interventions but wants to use the spoken word to help certain clients pursue their own stated goals of realignment with their birth sex. The lower courts said it was just regulating professional conduct, and applied rational basis review, upholding the law.
   b. Holding: The Supreme Court, 8-1, said that as applied to her talk therapy, the law regulates speech based on viewpoint and is subject to strict scrutiny.
   c. Reasoning: the fact that this regulates professional care does not change the First Amendment protection for speech and against censorship of certain viewpoints. The Court noted it is a narrow question, but that a ban having "some constitutionally sound applications" does not excuse it from the unconstitutional applications. Speech does not become conduct just because the state calls it that. "The First Amendment is no word game."
   d. Implications: this is an important reinforcement of free speech principles, saying states may not avoid them by claiming to regulate professional speech. Other state laws may also fall. Map listing states with bans: https://www.lgbtmap.org/equality-maps/conversion_therapy (23 states + DC ban it as of 2025).
3. *First Choice Women's Resource Centers, Inc. v. Davenport* (2026)
   a. Facts: a pregnancy center in New Jersey filed a §1983 suit challenging a subpoena issued by the AGs office there that demanded donor information and other burdensome requests. It was challenged as violating the organization's First Amendment rights.
   b. Holding: Reversed the lower courts' holding that the case was not ripe and remanded in a 9-0 opinion by Justice Gorsuch
   c. Reasoning: The Court said First Choice showed a present injury to its First Amendment associational rights, had Article III standing, and should be allowed to proceed in federal court with a §1983 claim.

d. Implications: This is important to hold back government efforts to intimidate and stifle First Amendment rights with impunity, saying they may not use seemingly neutral investigative tools in a targeted way when there is evidence of present injury to constitutional rights.

4. *Landor v. Louisiana Department of Corrections and Public Safety* (2026)
    a. Facts: A Rastafarian inmate who was transferred to a new facility a few months before the end of his sentence was held down and shaved in violation of his religious convictions, even after he showed clear legal precedent for how he should have received a religious accommodation so that he did not have to violate his faith.
    b. Holding: In a 6-3 decision, the Court concluded that, because RLUIPA is based on the spending clause power, its application is more limited, and it does not authorize lawsuits against individual prison guards.
    c. Reasoning: The Court indicated that the spending clause power, which allows Congress to spend money for the "general Welfare of the United States," allows Congress to put conditions on funds it distributes, but it can only impose sanctions (beyond terminating the funds) when the recipients of the funds consent directly. The Court said this is to "safeguard against conflating Congress's spending power with a regulatory power." (*13). The Court expressed concern about a concerning "explosion of spending clause legislation in recent decades" and worried it could lead to an "unbridled police power" for Congress. It put limits on both the Spending Clause power and also on the Necessary and Proper Clause power, saying that only authorized it to carry out its other enumerated powers. (*21-22).
    d. The Dissent: The dissent is concerned that this leaves prisoners without a remedy for overt violations of religious freedom. It is concerned that this cramped reading of Congress' power will undermine many current laws and will result in preventing Congress from acting in logical and normal ways.
    e. Implications: It is concerning if there is no remedy for an inmate whose rights have been so clearly and blatantly violated. This could create perverse incentive structures and prevent holding state actors accountable for knowingly violating constitutional rights. It also creates a strange situation where a sister statute with almost identical language is interpreted completely differently just based on the Congressional power underlying its passage. Because the case purports to lay out constitutional principles for any laws based on the Congressional Spending power and because it also restricts the breadth of the Necessary and Proper Clause, it could have broad

implications beyond religious freedom, restricting lawsuits and accountability based on numerous other Civil Rights laws.

Free Speech

Compelled Speech

- *Sanderson v. Hanaway* (8th Cir. 2026), On Pet for Cert
    - Facts: Sanderson is a registered sex offender in Missouri. A law in Missouri (Mo. Rev. Stat. 589.426) requires all registered sex offenders to post a sign at their residence on Halloween saying "No candy or treats at this residence." The district court granted a preliminary injunction. The 8th Cir affirmed in part, but vacated the injunction and remanded for reconsideration of the scope of injunctive relief in light of *Trump v. CASA*, 606 U.S. 831 (2025).
    - Reasoning: court found that the sign mandate was unconstitutional compelled speech under the First Amendment. In applying strict scrutiny, it said that the state does have a compelling interest in protecting children, but that the sign mandate was not narrowly tailored and not shown to provide additional protections beyond existing restrictions. Saying this sign mandate's speech restriction "is not merely incidental to conduct," but specifically requires posting a sign with a specific message. "Because the sign mandate (1) explicitly requires registrants to speak the government's message in the form of a sign at their residence, and (2) dictates specifically what that sign must say, it compels speech."
- *Pharmaceutical Research v. O'day* (9th Cir. 2026) – compelled speech in corporate speech context question. On Pet for Cert. Asking about whether intermediate scrutiny should apply to this commercial speech, and about whether there is a taking under 5th A.
    - Facts: challenge to an Oregon drug-pricing transparency law, requiring reporting of detailed information about price increases, including justifications, and allowing state officials to disclose the data if they think it is in the public interest. The company claims that forcing manufacturers to disclose pricing information violates 1st A free speech protections and 5th A protected trade-secrets.
    - Reasoning: The 9th Cir upheld the law, noting the highly regulated industry and rejecting that it is unconstitutionally infringing on corporate speech.
- *Doordash v. City of NY* (2d Cir. Aug 5, 2026)
    - Facts: a NY City law required food delivery apps to share customer personal data with restaurants. The City argued it helped the restaurants recover from

the pandemic, and prevented platform control. The Platforms argued that the law compelled commercial speech and threatened customer privacy. District court granted SJ for platforms, saying the law was unconstitutional. Holding: The Second Circuit Cir affirmed, holding the law invalid.

- Reasoning: the law failed the commercial speech standard in *Central Hudson* which required intermediate scrutiny be applied. [NOTE: the court said *Central Hudson* applied instead of *Zauderer* because this case was not about just compelling disclosure of factual information about the businesses own goods or services, but was about information belonging to third parties.]. The law failed intermediate scrutiny because the City couldn't show that its standards were a "reasonable fit" between its goals and its chosen method.

Counseling:

- Chiles (discussed above)
- *Catholic Charities of Jackson, Lenawee, and Hillsdale Counties v. Whitmer* (6th Cir. Dec 17, 2025)
    - Facts: Michigan's ban on conversion therapy for minors in 2023. Plaintiff here wants to provide talk therapy only. Services are grounded in the Catholic faith and provided through a religious organization that believes it is its ethical and religious duty to help clients with their goals. The clients determine the goals and there is informed consent. They say the law allows only one viewpoint. The district court ruled for Michigan, saying counseling was professional conduct that could be regulated, not protected speech.
    - Holding: The Sixth Circuit reverses, saying the law likely violates the 1st Amendment, even though this was decided before *Chiles* came out.
    - Reasoning: The court rejects that this is outside First Amendment protections, and says it is a content and viewpoint-based restriction on speech. The court says that the government may not use a "general tradition of regulation" to justify the rejection of speech protections. Instead, to do that, it must be clear that there is a "long-settled tradition of subjecting *that speech* to regulation," which usually applies to things like fraud, conspiracy, etc., that are always speech, but are regulated because of what the speech itself is doing, not about speech as a subcategory of a bigger concept.
        - Saying here, in particular, these "spoken words . . . reflect the moral beliefs of therapist and client alike."
        - Subject to strict scrutiny and likely to fail it.

- Implications: The 6th Cir seemed to get it right, as the Supreme Court used some of the same reasoning in *Chiles*.

Protected speech

- *Olivier* (see description above)
- Extreme speech can be protected speech: *USA v. Ali Al Timimi* (4th Cir. decided Jan 9, 2026)
  - Facts: Al-Timimi was a prominent Muslim scholar in the DC area and after 9-11, he encouraged people in gatherings to join the mujahideen and fight in favor of the Taliban. He was indicted and convicted by a jury and sentenced to life in prison.
  - Holding: the 4th Circuit overturned his remaining convictions.
  - Reasoning: the court said his speech was protected because his inflammatory words did not meet the *Brandenburg* standard for 'incitement' because they were vague and non-specific. It was not a concrete plan.
  - Implications: this clarifies again that the First Amendment free speech guarantee should have only narrow exceptions.
- Judges are held to a higher First Amendment standard: *Cohen v. Judicial Conduct Board* (PA S.Ct., 2025)
  - Facts: a state judge was suspended for violating impartiality when he made partisan social media posts
  - Holding: Pennsylvania Supreme Court upheld the judge's suspension.
  - Reasoning: The need for judicial neutrality outweighs free speech interests. The Court applied the *Pickering* test to evaluate and balance the government-employee interests, and holding that the state's compelling interest in maintaining an unbiased judiciary was critical.
  - On petition to SCOTUS.
- License Plate expression is protected speech: *Whateley v. Lackey* (4th Cir. July 31, 2026)
  - Facts: A Virginia resident applied for a personalized license plate with a vulgar message. The DMV issued it but then recalled it after complaints about its vulgarity. He appealed the decision through the internal administrative process and then sued, arguing a First Amendment violation. The district court granted the motion to dismiss, saying the plates were government speech.
  - Holding: the 4th Circuit reversed.
  - Reasoning: While specialty license plate designs are government speech, personalized character combinations are different. They are private speech,

not government speech, and are therefore subject to First Amendment protection.
    - Implications: An interesting line between government speech and personal speech.
- Parent free speech case related to school: *Fellers v. Kelley* (1st Cir. 2026)
    - Facts: Parents and grandparents of high school students sued the Bow School District in New Hampshire after they wore "XX" wristbands in protest while watching a girls soccer game with a trans athlete playing. Their quiet protest started at half time. They were told to remove the wristbands, and the superintendent said she believed their expression was "anti-trans" and "exclusionary." She said it violated their policy and issued no-trespass orders to the parents, saying they were threatening and harassing, and possibly disruptive. They brought suit. The district court treated the field areas as limited public for a and did a viewpoint discrimination analysis
    - Holding: that the parents are likely to succeed on their viewpoint discrimination claim over the sanctions because of their passive speech.
    - Reasoning: the court is only deciding as to the field and parking lot, not all parts of the school. The Court said the school district was not regulating the school environment. The court didn't categorically decide about the authority over the game context, but instead said there was no material disruption until after the officials tried to intervene. The court rejected the principal's claim that the "exclusionary" message was hateful and justified intervention. Interfering with only a particular disliked message clearly fails content neutrality. "[A]dministrators cannot favor one side of a debate involving parental speech on an issue of prominent public concern."
- Parent free speech claim: *Boone v. Lowell Area Schools* – now before 6th Cir; oral argument occurred July 23, 2026
    - Facts: Stefanie Boone is a parent of a child in Michigan. She vocally criticized DEI policies and standards and criticized a particular teacher on social media. The principal sent a cease and desist letter in Jan 2024 asking her to stop mentioning employees by name and asking her to get his permission before she communicated directly with them. She filed a lawsuit saying that policy was a prior restraint. The school district moved to dismiss, and the district court granted it.
    - Reasoning: The district court said there was no constitutional right to force government employees to listen. Judge Maloney said the restriction involved only who she could communicate with, not the content of her speech. He

drew a distinction between prior restraints and time place and manner restrictions. The case is now on appeal.

- Free Speech: *Imperial Sovereign Ct. v. Knudsen*, 170 F.4th 820 (9th Cir. 2026)
    - Facts: about Montana law prohibiting drag story hours in state-funded schools and libraries during operating hours. Plaintiffs are individuals and nonprofits claiming free speech and due process violations. The district court granted a preliminary injunction enjoining Montana from enforcement of the law, saying it was content and viewpoint-based.
    - Holding: on free speech, saying the law is a content-based restriction on expressive activity, and holding it fails strict scrutiny.
    - Reasoning: evaluating if strict or intermediate scrutiny applies, by asking "first, whether the restriction regulates purely expressive activity or expressive conduct, and second, whether the restriction is content based or content neutral" (846). Applying strict scrutiny after concluding that the law is content based both because it is aimed at content that is purely expressive activity and was adopted because of disagreement with the message (849, 856) If it is aimed at "unprotected speech" it should be drawn "to reach only unprotected speech."
- *Welty v. Dunaway* (6th Cir. Sept 24, 2026)
    - Facts: abortion rights advocates challenge Tennessee's Underage Abortion Trafficking Act's recruitment provision, saying that the language "recruit" is unconstitutionally vague and seek a preliminary injunction. The district court held it unconstitutional as applied to the plaintiffs, and issued an injunction.
    - Reasoning: on the First Amendment free speech issue, the court cites *Chiles* to emphasize that discrimination "based on the speaker's point of view" is particularly problematic and part of our "bedrock principles." It emphasizes that the "spoken word is perhaps the quintessential form of protected speech" and that applies here. The court then carefully proceeds through a facial challenge overbreadth analysis, stating that "applications of the Recruitment Provision to legal abortions will predominate over applications to illegal ones" and concluding it has a "sweeping unconstitutional reach" that is not "viewpoint neutral." It holds that "the Recruitment Provision is substantially overbroad and facially unconstitutional."
    - Chief Judge Sutton dissents, saying they barely have standing and that the law does not cover the abortion counseling efforts the plaintiffs do.

Student speech

- 6th Cir: *B.A. v. Tri County Area Schools*, 156 F.4th 782 (6th Cir. 2025)

    - Facts: “Let’s Go Brandon” shirts were worn at school, and so the school district banned its use. The brothers wearing it were told to remove their shirts and sweatshirts. The school claimed it was just restricting vulgar or profane speech, even if it was also political. The mother sued. The district court found the school reasonably found them profane.
    - Holding: the 6th Cir affirmed, saying under *Fraser*, schools have authority to restrict speech it considered vulgar. The decision is 2-1, with a disagreement about how much authority schools should have.
    - IMPLICATIONS: The level of deference given to school administrators is always of interest and has a significant impact on whether the First Amendment rights of students under *Tinker* really amount to much.
- 9th Cir: *B.B. v. Capistrano Sch. Dist. case* (9th Cir. March 10, 2026) (per curiam)
    - Facts: First grade student and her mother sued her CA school district for violating 1st A rights. She drew a “Black Lives Matter” themed picture and gave it to her fellow student as a gift, who is black. The second child’s mother expressed concern to the school, and the school then punished the first student, even labeling her expression “racist.” The district court granted summary judgment for the principal, saying the drawing was not protected speech.
    - Holding: the 9th Cir reversed, vacating the grant of summary judgment.
    - Reasoning: *Tinker* protects student speech unless the school’s interest in preventing disruption and protecting other students overcomes it. The Ninth Circuit says this does not fall into the three categories of student speech that may be regulated separate from *Tinker*, so it is subject to the *Tinker* balancing test. It is not adequate for the school to just want to avoid “discomfort and unpleasantness.” The age of students and the need to protect them is relevant, but not dispositive. The court acknowledged that when certain identity markers are involved, then it can lead to more sensitivity and result in leaning toward school oversight and more deference, but that was not involved to a high degree here.
    - Implications: helpful to see this affirmation of student speech rights, even at a very young age, though clear limits remain.
- 11th Cir: *Damsky v. Summerlin* (11th Cir. filed Jan 8, 2026)
    - Facts: About free speech for law students. Student was expelled from the University of Florida for posts made on X about how Jews need to be abolished. The student participated in hateful exchanges. He had also written a hateful paper, which was seen as protected, but the posts were analyzed as harassing and disruptive. He claimed his First Amendment rights

were violated. The university said the posts were not protected and were true threats. They claimed it was disruptive and *Tinker* applied. The district court granted an injunction for the student, saying his posts and conduct were not "true threats."
    - Holding: UF likely to succeed, so staying the injunction
    - Reasoning: Saying the statements, in context, "were reasonably interpreted as a call for extralegal violence that caused a serious disruption to other students' educational experiences and the school's ability to provide its services." The 11th Cir said *Tinker* appropriately applied based on its disruption standard. It said the language in the students posts about using "any means necessary" made it a call for extralegal violence. The court acknowledged this was off campus, but said the line isn't clear when there is "substantial disruption of learning-related activities."
    - Implications: interesting to see *Tinker* apply in the university setting (notably Judge Newsom dissented in the panel and questioned its application, though now numerous Circuits are starting to do so – 11th, 10th, 6th, 1st). While we may not want to protect this guy, it feels like it could be easily manipulated to see college as a "special school environment" with different protection standards than the rest of life, though college students are mostly adults.
- 5th Cir. DCt: *Qaddumi v. Davis* (W.D. Tex, 2026).
    - Facts: UT at Austin ordered a protest canceled by Palestine Solidarity Committee. A student, Ammer Qaddumi proceeded anyway with a peaceful protest. He was ordered to disburse, and officers said he didn't comply and arrested him. The school initiated proceedings against him for disruption, incitement, and failure to comply. He was suspended for three semesters and has a permanent disciplinary record that he might have to disclose later. He sued, claiming his constitutional rights were violated.
    - District Court holding: The university moved for summary judgment, but the district court denied it, saying a reasonable jury could find there was unconstitutional retaliation or viewpoint discrimination. The case proceeded.
- SCOTUS: *E.D. v. Noblesville School District* (Cert. denied June 15, 2026): The Supreme Court declined an appeal out of the Seventh Circuit from an Indiana high school student whose pro-life club flyers featuring "Defund Planned Parenthood" slogans were prohibited from being displayed on the school's walls. The Seventh Circuit had applied *Hazelwood* to find that the flyers may be reasonably interpreted to be "school sponsored" and therefore maybe be censored by the school. Justice

Samuel Alito dissented, arguing the court should have taken the case to clarify the boundaries between private student expression and government school speech.

- SCOTUS**:** *C.S. v. Craig McCrumb* (Cert. denied June 8, 2026**):** The Supreme Court rejected an appeal out of the Sixth Circuit involving a Michigan elementary student's cap featuring an image of a rifle and the words "come and take it." The Sixth Circuit reasoned that given the trauma of a recent local school shooting and the presence of students from that district at the school, as well as the young age of C.S. and her classmates, school officials reasonably forecasted that the hat could cause a substantial disruption to school activities under the standards set by *Tinker*.
- *Fellowship of Christian Athletes v. Board of Education of the Hopewell Valley Regional School District* (D. NJ, filed 8/11/2026).
    - Facts: A volunteer ban just for religious clubs only; the school district has singled them out for disfavored treatment. But student leaders want the guidance.
    - SEE BECKET WEBSITE
- *InterVarsity Christian Fellowship v. SUNY Broome Community College* (D. N.Y., filed Aug. 21, 2026)
    - Facts: InterVarsity sought official recognition from the college, which is available to dozens of other student groups. But when InterVarsity's application for official recognition made clear that its student leaders are asked to share its Christian faith, SUNY Broome said no.
- *Campus Bible Fellowship at SUNY Broome Community College v. SUNY Broome Community College* (D. N.Y., filed Sept. 3, 2026)
    - Facts: CBF is a student club with a mission to share and defend the Christian faith. As such, the club requires its student leaders to be Christians. SUNY Broome claims that CBF is violating the college's anti-discrimination policies by limiting its leadership positions to members who "profess a personal relationship with Jesus Christ." The college refuses to officially recognize CBF as a student club, preventing it from reserving campus space and accessing financial resources

Teacher Speech:

- 4th Cir: *Polk v. Montgomery County Public Schools* – active petition for cert.
    - Facts: substitute teacher suing, claiming that the school district violated her First Amendment rights by requiring her to use preferred pronouns and communicate to parents without sharing about gender transitions unless the student consents. The district court said she did not have free exercise rights or free speech rights in play.

    - Holding: The Fourth Circuit affirmed
    - Reasoning: On free exercise, the policies are neutral and generally applicable. On free speech, it is government speech and not protected.
- 11th Cir.: *Wood v. Florida Department of Education* (11th Cir. 2026)
    - Facts: Florida law banned public school employees from using preferred pronouns that don't match their biological sex. Trans teacher wanted to use their own preferred pronouns in class, and filed a lawsuit, claiming free speech violations. The district court granted teacher a preliminary injunction, saying she was merely engaging in self-referential speech unique to her and owing to her personal identity, not her official duties.
    - Holding: The Eleventh Circuit reversed, vacating the injunction, and finding the teacher's speech was not protected.
    - Reasoning: the panel, 2-1, held that Wood spoke as a government employee under *Garcetti* when speaking in the classroom and addressing students during class (even in relation to self-identification) and not as a private citizen, because the teacher was acting pursuant to official duties and was "on the clock."
- *Dolce v. Connetquot Central School District* (2d Cir. 2026)
    - Facts: teachers claim the school district violated their 1st and 14th Amendment rights and Title VII when they were ordered to remove pride flags and stickers from the walls of their public high school classrooms (Ecke's flags were huge, and some students said they were uncomfortable, so they asked her to take down the flag and suggested she post a "safe space" message instead. The administrators shared with all employees that district policy forbid engaging in "political practices" and limiting flag use. The teachers are LGBTQ+ community members and feel strongly about posting the flags. They say they were treated unfairly and differently from others.
    - Holding: affirming dismissal of the complaint.
    - Reasoning: applying *Garcetti*, the court said the classroom wall was speech pursuant to their official duties as government employees and did not violate their First Amendment rights. The principle it gave is: "when speech owes its existence to a public employee's professional responsibilities," the Government gets to control the content of that speech—or restrict it altogether. Teachers "are hired to teach a particular curriculum" and "create classroom learning environments," which includes decorations on the walls. Those decorations are thus the Government's speech.
        - The court acknowledges the delicate line here and rejects other arguments: 1) it distinguishes academic freedom arguments as for

university professors. 2) It rejects the claim that *Hazelwood* means that everything said to a captive audience during instructional time would be seen as school sponsored. Recognizing that the implication of this would mean "anything a teacher says or does in view of her students" would be unprotected, and that doesn't fit with *Kennedy*.
        - The Court also noted the policies were not selectively enforced due to anti-LGBTQ+ animus, and rejected EP and Title VII claims.
    - Implications: This case considers when a teacher's speech is protected speech and when it is just government speech.
- 5th Cir: *Barber v. Rounds* (5th Cir. 2026)
    - Facts: Teacher Staci Barber sued principal for prohibiting her from praying on school grounds. She had invited staff to join her in prayer before the school day started, but the principal said she could not pray where students "might see" or "be influenced by" her conduct. The principal moved to dismiss based on qualified immunity. The District court denied his motion to dismiss.
    - The 5th Cir affirmed here, saying there was no qualified immunity because it was controlled by *Kennedy v. Bremerton Sch. Dist*.
    - Reasoning:
        - Answering the Qualified Immunity questions about 1) the government's conduct violating a constitutional right and 2) whether that right was clearly established.
        - At this stage, taking the facts as stated, she has alleged a clear prohibition on private religious expression that implicates free speech and free exercise and that *Kennedy* squarely governs.
- *Ellis v. The Brooke Charter Schools*, (D MA Aug 13, 2026)
    - Facts: computer science teacher at Brooke High School, part of a Charter School group, refused on religious grounds to use preferred pronouns in general and in a student's requested letter of recommendation. The teacher was terminated.
    - Holding: granting partial motion to dismiss for failure to state a claim.
    - Reasoning: Court used the First Circuit's 3-step inquiry for public employee free speech rights. 1) Speaking on matter of public concern? If pursuant to official duties, then no First Amendment claim. 2) If the speech is on a matter of public concern, then can the government justify the restriction based on impact to its operations? 3) Was the protected speech "a substantial or motivating factor in the adverse employment action"?
        - The court says the inquiry stops at question 1 because the policy was part of official duties. "Addressing students, particularly in the

classroom, is essential to teaching." This is about a requirement "to interact with students in a way that does not create a barrier to learning or an unnecessary distraction." In addition, writing a letter of rec is "within the realm of a teacher's traditional and typical duties."
        - Court said, even if speech outside of her official duties, it "did not involve a matter of public concern" because it "does not contribute to the broader public debate on transgender issues."
        - The court included a list of relevant cases on this pronoun question.
- 9th Cir: *Mirabelli v. Olson* – see above under parents rights for description
- *Thompson v. Central Valley School District*, 163 F.4th 654 (9th Cir. 2025)
    - Facts: middle school assistant principal making retaliation claim. He had posted offensive social media posts about the Democratic National Convention, was placed on administrative leave, investigated, and then demoted from his administrative role, citing numerous reasons including ability to lead and create culture in the district. He sued for First Amendment violations, and the district court granted summary judgment to the school district, based on its interest in preventing disruption and creating a safe and inclusive learning environment.
    - Reasoning: The Ninth Circuit applied *Pickering* analysis and noted it was a fact intensive inquiry. It said it was protected speech and that he did face retaliation. But then said the school district met its burden to show its actions were justified by the reasonably predictable disruption to the district's interests. The school district's interest in safe, inclusive environment outweighed the assistant principal's 1st A rights to post his offensive social media posts.
        - The court used a "sliding scale" where the nature of the expression and the likely disruption affect the analysis. When speech is particularly derogatory, then protection is lessened.
        - The fact intensive inquiry also likely weighed the careful restraint shown by the district in demoting rather than terminating Thompson.
    - Implications: Employees, particularly in the school environment, will be less protected if they are trying to defend derogatory speech that is likely to be disruptive.
- 7th Cir: *Hedgepeth v. Britton* (7th Cir. Aug 2025)
    - Facts: Teacher fired because of her controversial social media posts, citing the disruption she caused because of the broad awareness of her speech. She also had prior discipline for profane outbursts in the classroom. She was found to have violated numerous policies, and the school board terminated

her employment. She sued, claiming the firing violated her 1st Amendment speech rights.
    - Holding: finding for the school
    - Reasoning: teachers have some 1st Amendment rights, but the government has to be able to ensure that its services are delivered effectively. Using *Pickering* fact-intensive balancing test, the 7th Cir. held the school's interests outweighed the teacher's speech rights. Some of the key factors were: the particularities of the need for discipline and harmony among teacher co-workers; the impact the particular speech has on job duties (here clear disruption shown); the time, place, and manner of the speech; the context where the dispute arose; whether the speaker should be regarded as a member of the general public (or if certain "public-facing employee" roles like teacher have a higher standard of maintaining "public trust and respect to be effective."
    - Implications: Tone and respect matter a lot in employment disputes and will have a significant impact on how Pickering balancing plays out. In addition, concepts of "disruption" continue to reign supreme in school context cases.
- 5th Cir: *Lowery v. Mills* (5th Cir. 2025) Now on petition for cert
    - Facts: Professor says he was threatened because of his criticism of university policies and administrators. He said that the school threatened his job security, manipulated his opportunities, and had him tracked, all of which caused him to self censor. The district court dismissed the retaliation claim, saying he had not alleged adverse employment action, and granted summary judgment on the chilled speech claim and the unwritten speech code claim for lack of sufficient pleading.
    - Holding: the Fifth Circuit said he had standing but could not prevail on the merits because he did not show an adverse employment action, and his claims about an unwritten speech code were too conclusory.
    - Implications: a professor cannot just claim he is disfavored and faces opposition as a First Amendment claim. There must be a clear adverse employment action, which is not met by mere accusations, investigations or criticism that causes chilling.
- 9th Cir. *Reges v. Cauce* (9th Cir. Jan 5, 2026) (Judge Bress)
    - Facts: Professor put in a satirical land acknowledgement in his syllabus. He was investigated, reprimanded and threatened for contentious statements in his class syllabus. The statements mocked the university's model, causing debate and offense in the community.

    - Holding: The Ninth Circuit said the professors First Amendment speech rights were violated.
    - Reasoning: Some student offense is not a basis to justify retaliation. He was speaking on a matter of public interest, and this was not government speech when involving the speech of a professor in his own capacity at the university level. So it is protected speech and the *Pickering* balancing test applies.
- *Robinson v. Damphousse* (W.D. Tex 2026): Professor gave a private-citizen presentation supportive of the Palestinian resistance, and he was accused of inciting violence. He was placed on administrative leave and his tenure-track contract was not renewed. He sued for First Amendment retaliation. He was granted a preliminary injunction, and the judge ordered Texas State to reinstate him or continue his pay for a year or until the litigation was resolved.
- 9th Cir. school counselor speech: *Theis v. Intermountain Education Service District* (9th Cir. 2026)
    - Facts: books on window sill in counselor's office where he met with students that expressed traditional or binary views on biological sex. The school district ordered him to remove the books, but he refused and filed a federal lawsuit.
    - Reasoning: 9th Cir in 2-1 decision, upheld the district court and ruled against Theis. The majority said an employee's décor in a student-facing professional setting was government speech and was not protected because it was tied to core professional responsibilities.
    - The dissent argued the books were personal office décor that should have been protected speech under Kennedy. He brought up selective censorship without evidence of disruption and the danger of viewpoint discrimination.
- 7th Cir. – Settlement was reached in *Kluge v. Brownsburg Community School Corporation*. The former orchestra teacher had sued the school district in 2018, claiming they violated his rights to religious accommodation under Title VII. The case went up and down to the 7th Circuit, which ultimately determined that a jury should consider the case with the more significant "undue hardship" standard under *Groff v. DeJoy*. Rather than go to a jury trial, the school district chose to settle, and agreed to provide training to its staff about religious discrimination.
- *Marisol Arroyo-Castro v. Gasper* (D.CT Nov 3, 2025) (teacher's crucifix on wall of classroom could be excluded because "Unlike the coach's prayer in *Kennedy*, the crucifix display is a religious message on the classroom wall broadcast to a "captive audience" of students required to be in the classroom.")

Government speech

- 9th Cir: *Khatibi v. Hawkins* (9th Cir. 2025)
    - Facts: Physician instructor of Continuing medical education courses and a nonprofit claimed that CA requirement (based on AB 231, amending section 2190.1) that CME courses eligible for credit have to include info about implicit bias violates their free speech. The lower court said these continuing education sessions are govt speech.
    - Holding: affirming district court dismissal of the action
    - Reasoning: Applying *Shurtleff*, the panel said the CME courses granted credit are government speech. It says the line between government speech and private expression can be blurry, but a "holistic inquiry" to uncover government intent is helpful. Some factors the court considered "are the history of expression at issue, the perception of who is speaking, and the extent of governmental control over the expression. It then applied them in a summary way, saying the state sets the standards and deems what is "acceptable," the government has long regulated medical profession and may use the training to express its own views, and the public would tend to attribute the training to the govt. So it said the free speech clause did not provide protection.
    - Implications: I think this is a concerning expansion of government speech. It is concerning that the court said the whole courses are government speech and immune from free speech, as opposed to saying the standards the state sets for qualifying CMEs are government speech, but not the entirety of the training materials. It is likely to stifle principles of academic freedom and related concepts. It means the state could require any changes to any CME at all.
- 8th Cir: *Penguin Random House v. Robbins* (8th Cir. 2026)
    - Facts: Iowa law involving books to be removed from public school libraries if they contain "descriptions or visual depictions of a sex act." A coalition of publishers, authors, educators and students argued the broad definition of "sex act" would remove too many books. DCt issued PI enjoining enforcement of some of the law. Then it was vacated and remanded under *Moody v. Net Choice*, 603 U.S. 707 (2024). The district court said there was no clear standard for 1st A rights in school setting, but relied on the obscenity standard, rejected *Hazelwood*'s application, and issued a prelim injunction.

- Holding: Vacating preliminary injunction and remanding; the state has discretion to set public school curricula under *Hazelwood* without running afoul of the First Amendment, and the school library is part of curriculum.
- Reasoning: The Library program is defined under Iowa Code §256.11(9), saying it is for "age-appropriate materials" that support the "goals of the total school curriculum." While First Amendment interests are potentially in play, the students can get books elsewhere (citing *Pico* case), and the school setting makes First Amendment claims "not as straightforward." Then saying this fits the parameters of the Supreme Court decision of *Hazelwood*, which clarified the school had significant authority over its curricular decisions, and that "a school library bears the imprimatur of the school and is properly characterized as part of the school's curriculum."
- IMPLICATIONS: It is a little concerning to hear the 8th Circuit state that rights in the school setting are "not as straightforward" in quite those terms. But it is helpful to see *Hazelwood* clearly tied to "curricular" concepts.

Limits on protections for speech

- *Ford v. McKesson* (5th Cir. 2026)
  - Facts: McKesson was a leader in a BLM movement who attended hundreds of protests. In one in Baton Rouge in 2016, an officer was injured after a protestor threw a piece of concrete that hit him in the face. The officer asserted tort claims, many that were dismissed. But the 5th Cir reversed on the negligence claim based on "a duty to exercise reasonable care in organizing the protest" using a "reasonably foreseeable" standard, and rejected the First Amendment defense. The case went up and down, with SCOTUS remanding for the Louisiana SCt to clarify the law on the negligence claim about a bar on the claim by professional rescuers, but the Louisiana SCt said that was not a bar. The district court then ruled for McKesson on the negligence claim, saying he was First Amendment protected. The officer appealed.
  - Holding: the 5th Circuit reversed the Summary Judgment, remanding for further proceedings
  - Reasoning: the court said this should go to a jury, and that the jury could find that the leader organized and directed the protestor's actions and intended to produce disorder.
  - Implications: As the dissent pointed out, the main concern here is that if this expands at all, then it could result in watering down First Amendment protections and allowing lawsuits against protest leaders, who could be held

liable for unintended turns of events. That could therefore lead to stifling speech.

Govt overreach

- ### Standing
    - *First Choice* (2025) - §1983 claims and getting into court (see brief summary above)
        - Holding there is a present injury to First Amendment associational rights when a subpoena demanded the identities of financial supporters. This is because an injury in fact can arise when constitutional rights are burdened, such as if there is an "objectively reasonable chill" to First Amendment associational rights, even if there is not yet other tangible harm.
        - "Commonsense inferences" can be made "when assessing Article III standing, including inferences about third party behavior" (citation modified). Section 1983 claims are framed to provide a federal forum for claims that constitutional rights have been violated, so standing has to allow for that.
    - Related case in terms of targeting of pregnancy centers (and government coercion and informal censorship/jawboning), though not focused on standing: *A Woman's Concern, Inc. v. Healey* (D. Mass Feb 17, 2026) (granting the state's motion to dismiss, saying the govt can have its own speech to express viewpoints and criticize (including by launching and pursuing a public awareness and education campaign). The court then distinguished *Bantam Books* and *Vullo*, saying there was "no direct effort to suppress speech" but just public officials and advocacy groups using their First Amendment rights. It dismissed the case, and it is on appeal. The court said it was doing a careful "totality of the circumstances" analysis to see if there was "an implied threat to use the power of the state to suppress YOM's free speech," and found that there was not because the guidance summarized requirements for state licensure and expressed viewpoints, using *Vullo*'s non-exhaustive list of factors.
    - *Right to Life of Michigan v. Whitmer* (6th Cir. May 26, 2026) (unpublished)
        - Facts: anti-abortion groups and medical associations tried to sue state officials over Michigan's constitutional amendment that enshrined reproductive rights. The district court dismissed the case for lack of standing.
        - Holding: The 6th Circuit affirmed that the plaintiffs lack standing
        - Reasoning: here focused on the second and third elements of standing, saying the injury is not traceable to the actions of defendants because general authority is not enough and there is not a plausible allegation about what the defendants are likely to do that will cause the plaintiffs injury. And it is therefore not redressable by enjoining those officials.

- Free Speech Standing: *Jensen v. Minnesota Board of Medical Practice* (8th Cir. Sept 15, 2026)
    - Facts: complaints were received about Dr. Jensen spreading Covid misinformation, and the Minnesota Board of Medical Practice conducted multiple investigations and continued to threaten him with more. He spent hours responding, provided hundreds of pages, and hired counsel. He also said it chilling him from sharing his political views and caused him significant cost.
    - Reasoning: Dr. has established standing for damages and injunctive relief claims, but remanding to address the merits. His self censorship was reasonable and normal, not necessarily stopping him, but changing how he communicated. This was a significant "chilling effect," including in relation to his campaign for public office.
- 8th Cir: Standing re required DEI training challenge: *Henderson v. Springfield R-12 School Dist.*, (8th Cir. Dec 30, 2025) (en banc)
    - Facts: school district employees sued the district over mandatory DEI training. They claim they were forced to select the preferred speech of the school as answers in their training, and that it was compelled speech. They said they were told the school district would not tolerate their different views. The district court dismissed the suit for lack of standing and ordered the employees to pay legal fees. The 8th Cir panel agreed they lacked standing, but reversed the attorneys fees, saying it wasn't frivolous.
    - Holding: The en banc court reversed and remanded, saying there was standing.
    - Reasoning: The en banc court said that there was a credible threat to the employees if they did not participate, which gave them standing. It noted, however, that if the training was within their official duties, they might not have First Amendment protections based on compelled speech.
- 9th Cir: Organizational Standing: *Ariz All. For Retired Ams. v. Mayes* 186 F.4th 622 (9th Cir. 2026) (en banc)
    - Facts: Arizona enacted a law with a provision that criminalizes knowingly providing a "mechanism for voting" to someone registered to vote in another state (the "Felony Provision"). Three organizations—the Arizona Alliance for Retired Americans ("AARA"), Voto Latino, and Priorities USA ("Organizations")—sued, claiming that the Felony Provision, among others, would interfere with their voter-registration and voter-education efforts. The district court agreed and granted a preliminary injunction.

- Holding: The Court held that the organizations had standing to challenge Arizona's Felony Provision, because voter registration may be First Amendment protected conduct, but not the Arizona Cancellation Provision. It vacated the preliminary injunction and remanded the case. The Court overruled prior organizational standing analysis in 9th Circuit cases.
- Reasoning: articulating Organizational Standing requirements:
  - It may "have standing in its own right" and on its own behalf, as long as it has a stake in the outcome.
  - A concrete and particularized injury for an organization is concrete and not a "mere abstract concern about a problem of general interest." It can't just be the frustration of mission goals, but should involve an action that "directly affects and interferes with its core business activities." (citation modified).

- Associations suing on behalf of members: *Defending Education v. Croton-Harmon Unified Free Sch. Dist*. (2d Cir. 2026).
  - Facts: challenge to speech policies adopted by the school district, claiming they violate the First And Fourteenth Amendments. The organization is representing its parent-members whose children hold views they want to share but do not because it is likely prohibited by the speech policies. Under 2nd Cir prior caselaw, the organization lacked standing. This panel says they circulated the opinion to all members of the court and after no objection are changing 2nd Cir caselaw.
  - Reasoning: now holding, like other circuits, that for a §1983 claim, an association can sue on behalf of its members when "(a) those members would otherwise have standing to sue in their own right, (b) the interests protected are germane to that organization's purpose, and (c) the participation of individual members in the lawsuit is not necessary for the claim asserted or the relief requested."
- Now before SCOTUS; Ninth Circuit held there was no standing for a Parent claim: *Int'l Partners for Ethical Care, Inc. v. Ferguson*, (9th Cir. July 25, 2025)
  - Facts: parents challenging the constitutionality of several WA laws. Parents allege three types of injuries: "constraints on their ability to parent, censored speech, and restrictions on access to information about their children." The district court said they have no standing, and the original panel decision affirmed dismissal for lack of standing. It said that just because a child "ran away once is not sufficient to suggest" the child "will do so again in the future."

    - Petition for rehearing en banc was denied Dec 5, 2025, with Dissents: 1) A dissent by Judge VanDyke (and Bumatay) said the legal regime infringes on parents' right to direct the care and upbringing of their children, empowering state-run shelters to hide minors from parents, violating the "common sense principle that parents—not the state and certainly not the child—hold primacy over the parent-child relationship." It objected to the panel's conclusion that there is no "harm" to parents, saying it reflected a "reductionist view of parental rights" that makes it more like a property interest in only actual physical harm and physical custody, not broader involvement and the right to direct their upbringing. 2) A dissent by Judge Tung, joined by Bumatay and VanDyke, said the facts alleged should have been enough to show standing because they are clearly "far from speculative."
- Qualified Immunity:
    - Supreme Court: *Zorn v. Linton* (2026)
        - Facts: a protestor at the Vermont state capitol was demonstrating for universal healthcare and refused to leave, so an officer use a "pain compliance technique" to force her up and out of the building. She ended up with "permanent damage to her left wrist and shoulder" and suffers from PTSD. She filed a civil rights lawsuit based on the 4th Amendment.
        - This 6-3 decision out of the 2d Cir confirmed a broad view of qualified immunity, saying there had to be a clear precedent that is particularly on point to overcome it. It reversed the 2d Cir and said the officer in the case was entitled to qualified immunity.
        - Implications: This is concerning if it is applied to First Amendment violations, because they are rarely exactly the same, but have very clear principles that government actors should know, especially when there is not urgency… The fact that it was a summary reversal is even more concerning.
    - Eleventh Circuit: *Foster v. Echols County School District* (11th Cir. Mar 2026)
        - A long time Black teacher sued her school district for race discrimination. She alleged longtime racially motivated hostility.
        - Holding: the 11th Cir said the individual school officials could not claim qualified immunity and get the lawsuit dismissed. This allowed her lawsuit for civil rights claims and breach of contract claims to proceed.
        - Helpful to see this protection for civil rights claims to get into court.
    - *Hershey v. City of Bossier City,* 156 F.4th 555 (5th Cir. 2025), reh'g denied, 165 F.4th 292 (5th Cir. 2025), and 163 F.4th 976 (5th Cir. 2026). Cert Petition filed

        - Status: Hershey wanted to distribute leaflets about vegetarianism (with a religious twist of sorts). He was threatened by officers with arrest. He tried to explain his constitutional rights, but they didn't listen and demanded he leave the park. He filed a §1983 claim against officers and municipality, also claiming *Monell* violations. The district court dismissed *Monell* claim and granted officers qualified immunity. The 5th Cir reversed on *Monell,* but affirmed qualified immunity. The petition for rehearing en banc was declined. Judge Ho concurred in the denial based on 5th Cir precedent that narrowly interpreted the SCOTUS decision *Hope v. Pelzer*, 536 U.S. 730 (2002), inviting further review of the qualified immunity issue, pointing out the circuit split that leans the other way.
        - Implications: here the 5th Cir departed from 9 other circuits that suggest there is an "obviousness exception" to qualified immunity's requirement that there has to be a case basically on point to find clear notice for state actors. This is problematic in the First Amendment context because government actors typically have more time to deliberate, so if it is obvious that they are acting counter to law, even if there is not a case exactly on point, that should be enough to overcome qualified immunity. Obvious constitutional violations should not be ignored, and should not prevent meritorious 1983 First Amendment cases.
    - *Barber v. Rounds* (5th Cir. 2026)
        - See below under teacher rights for this case discussion. The 5th Cir found that the school principal was not entitled to qualified immunity, because there was a clear application of known First Amendment rights for teachers based on *Kennedy v. Bremerton*.
        - Implications: helpful to see the recognition of clearly established First Amendment rights.

Establishment Clause

5th Circuit 10 Commandment cases:

- *Roake v. Brumley* (5th Cir. 2026) (en banc)
    - Facts: about the Louisiana law HB 71 that sets standards but leaves the "nature of the display" in schools to the "discretion of local school boards."
    - Holding: Per curiam dismissing on ripeness grounds. "Because the parents' challenge turns on unresolved factual and contextual questions, equitable relief was premature, and we vacate the preliminary injunction."

    - Reasoning of majority: Saying the issue is not ripe because the constitutional question is still "in the abstract." Saying they don't know things like: "how prominently the displays will appear, what other materials might accompany them, or how-if at all-teachers will reference them during instruction." Then saying they don't know if every display would violate the Establishment clause nor whether it would be a free exercise violation of parents rights.
    - Judge Ho's concurrence said he would hold the law is constitutional and consistent with our Founding traditions. He rejected reliance on the Supreme Court case *Stone v. Graham*, 449 U.S. 39, (1980) because it turned entirely on *Lemon*.
    - Judge Ramirez's principal dissent said this is about pure legal issues that don't require more factual development, and that it violates the Establishment Clause because of clear concerns about coercive pressure.
    - Judge Dennis' and Judge Higginson wrote dissents (each joined by 4 more), saying they must rely on *Stone* and find this violates the Establishment clause. They say they cannot overturn *Stone*.
- *Nathan v. Alamo Heights Indept Sch. Dist.* (5th Cir. Apr 21, 2026) (en banc)
    - Facts: Texas law SB 10, passed in June 2025, requires public schools display a copy of the 10 commandments "in each classroom" as a durable poster or framed copy, and specifying the text. They may receive donations that meet the requirements or may buy the displays with district funds. Parents sued based on Establishment clause, and claimed that the law "burdens religious exercise by coercing their children to reverence the Commandments." The district court agreed and enjoined the law.
    - Holding: The en banc court says the Texas law does not violate either the Establishment Clause nor the Free Exercise Clause.
    - Reasoning on Establishment: the Court rejected *Stone* as controlling, saying its *Lemon*-based analysis had been overruled, and so was not controlling. It then used a standard of historical analysis asking whether the law "resemble[s] a founding-era religious establishment." Concluding no. It doesn't do the "kinds of things establishments of religion did at the founding." (quotations removed).
    - Dissents: there were four different dissents. They largely pointed out the problem of assuming *Lemon* being overruled meant that all precedent relying on it is rejected. Some also addressed coercive pressure concerns, etc.
- Implications of both of these cases: This applies a historical analysis for the Establishment clause and assumes that cases based on *Lemon* are no longer good

law because *Kennedy* abrogated it, even if they have not specifically been overturned.

Free Exercise

Government benefits

- *Hall v. Fleming* (4th Cir. May 13, 2026) [Answering: How Narrow is *Locke v. Davey,* 540 U.S. 712 (2004)?] On petition for Cert.
    - Facts: About VTAG, Virginia's tuition grant program that excludes those majoring in religious training or theological education programs (in the CIP code 39 series). Hall is a student enrolled at Liberty. She was enrolled in Music Education: Choral, and qualified for VTAG. When she changed her major to "Youth Ministries," and then "Music and Worship," she was ineligible. She sued, challenging her disqualification from the program as a violation of her free exercise rights.
    - Holding: the VTAG program restriction on religious vocation majors does not violate the Free Exercise Clause.
    - Reasoning: Locke has not been overruled and this is on all fours with it. The 4th Cir says the SCOTUS line of cases (Trinity Lutheran, Espinoza, and Carson) just cabined it (to this exact situation) and did not eliminate it. Those cases all distinguished *Locke* from their facts. Espinoza specifically said the Montana law it was considering was about religious status, not religious use, and noted a substantial interest of the state in not funding the training of clergy. Then *Carson* said *Locke* wasn't so much based on use, but on the narrow purpose of training clergy. The 4th Cir rejected the argument that this was like *Lemon*, which was all but overruled before it was finally stated to be overruled in *Kennedy*. This is different because the Supreme Court cases didn't even make specific statements rejecting *Locke*'s holding.
    - Concurrence – Judge Richardson says the Supreme Court should overrule *Locke* specifically.
    - IMPLICATIONS: The petition for cert is asking the Supreme Court to really clarify whether *Locke* is still good law, since it is inconsistent with the principles that the Court has laid out about government benefits.

Government Barriers

- *Olympus Spa, et al. v. Armstrong* (9th Cir. 2026)

    - Facts: a Korean spa for women was targeted by Washington state as being in violation of WLAD because it did not allow transgender women who had not yet had surgery. When Olympus Spa sued, a district court ruled for the state.
    - Holding: The original 9th Circuit panel affirmed that the enforcement of WLAD against it as a public accommodation was "a straightforward application of Washington's statutory scheme" and did not violate free speech, free exercise, or association rights.
    - On free exercise, the court said, although the spa claimed its free exercise was burdened because the law forced it "to renounce its Christian faith by its deeds" by forcing mixing of nude persons of the opposite sex who are not married, the court said it was only an "incidental burden" because they were not stopped from expressing religious beliefs, the law was neutral and generally applicable, and there was no evidence it was being enforced "because of their religious nature."
    - The denial of rehearing en banc included numerous dissents and created controversy because of the rude language used by one judge.
        - Judge Tung's dissent (joined by Nelson, Bumatay, and VanDyke), argued that free exercise should have applied because WLAD is not generally applicable and secular activities were treated more favorably.
        - Judge Collins said the spa did not violate WLAD as written, agreeing with Judge Lee's dissent in the original panel that noted the spa was distinguishing based on anatomical distinctions, not identity, and that it was based on important cultural realities that should not have been ignored.
- *Cedar Park Assembly of God of Kirkland, WA v. Kuderer* (9th Cir. 2026)
    - Facts: Cedar Park is a church and employer that objects to abortion and some contraception and doesn't want to pay for health insurance that covers it. It claims that WA statutes that regulate the health insurance carriers burden its free exercise rights, including the Parity Act and the Conscience statute. The case has been going on a long time, with the 9th Cir initially finding no standing, but then GVRed after *Diamond Alternative Energy*.
    - Holding: The 9th Cir. found standing but held the statutes did not violate free exercise or church autonomy and affirmed summary judgment for the state.
    - Reasoning:
        - Burden: The majority ultimately said it would assume there is a burden, but also spent many pages trying to show there is not a burden: it suggested economic logic is not enough; it actively

questioned what the church said violates is beliefs and pulled apart other beliefs and claims the church made to try to show it was inconsistent, and that its arguments were disingenuous…

        - Neutrality: Basing it on whether "the object of a law is to infringe upon or restrict practices because of their religious motivation." (citing *Lukumi*). Then saying the stated purpose is to protect women, there is no mention of religion, and that there is evidence that they tried to allow religious support, so no hostility.
        - General Applicability: Saying not underinclusive because it treats religious and secular the same. And saying no mechanism for individualized exemptions and that the adjustment to avoid federal violations doesn't count as undermining it.
    - Implications: very problematic reading of free exercise doctrine.
- *Renterria v. New Mexico Office of the Superintendent of Insurance* (10th Cir. 2025)
    - Facts: religious health care sharing ministry (Gospel Light Mennonite Church Medical Aid Plan), that facilitates voluntary sharing of healthcare expenses consistent with religious beliefs sued the state's insurance regulators after they shut down the ministry, claiming state law violations. Federal law (the ACA) has an exception for health care sharing ministries (HCSMs), but New Mexico law did not. The HCSM filed a lawsuit with Free exercise claims, seeking PI to block state enforcement. The district court denied a preliminary injunction.
    - Holding: The 10th Cir affirmed the denial, saying enforcement action was to protect consumers and regulate activities, not to target religious beliefs, and the law and insurance code are neutral and generally applicable, so rational basis review applies.
        - Free exercise neutrality analysis is quite narrow: the court said "An ordinance is neutral so long as its object is something other than the infringement or restriction of religious practices." It is not neutral if the government acts "in a manner intolerant of religious beliefs or restricts practices because of their religious nature." It concluded that this law was neutral because the state did not make "official expressions of hostility" in its consumer advisory and that its statements were not "based on religious animus."
        - Free exercise general applicability analysis: the court asked if the law had a "mechanism for individualized exemptions" (citing *Fulton*) or if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." It

said comparability had to be based on the government interest. It concluded that the exemptions for secular conduct were not sufficiently comparable because HCSMs undermine New Mexico's ability to regulate the insurance industry, and the other organizations only require partial exemptions because the payments they make are "incidental or ancillary" to other things.

- The dissent said the state had regulated the religious org "more stringently than it regulates similarly secular organizations like labor unions and fraternal organizations" in violation of free exercise. He noted that "facial neutrality is not determinative" and quoted the Supreme Court's admonition to look out for "subtle departures from neutrality," including "masked governmental hostility" and "religious gerrymanders."
- On petition for cert – solicitor general was invited to weigh in in Oct 2025.
  - The US submitted an amicus in response to the Court's invitation, and said the Court should hold the petition until after it decides *Roy*.

Native American Free Exercise rights

- *Perez v. City of San Antonio*, No. 23-50746 (5th Cir. denial of rehearing on Feb 27, 2026). Petition for cert pending
  - Facts: involving the Lipan-Apache Native American tribe and a particular river bend that they say is central to their creation story, and the only place where specific ceremonies can be performed involving sacred trees and nesting cormorants. A divided 5th Cir panel ruled 2-1 against the tribal church, affirming the denial of an injunction against a park development plan.
  - Reasoning below: The panel majority said the planned tree removal and bird deterrence did not "substantially burden" plaintiffs religious exercise because they would still have access to the park. It said the city had a compelling interest to manage and preserve public health, and ensure compliance with federal law. It said it met the least restrictive means standard the way they did anti-nesting methods. San Antonio could proceed with its restoration and development plans based on this narrow reading of Texas laws protecting religious freedom.
    - Before its opinion, the 5th Cir had certified a question of state law to the TX SCt, and in June 2025, the TX Court had said its constitutional provision protecting religious services did not extend to actions involving the preservation and management of public lands.
  - The denial of en banc review was accompanied by some dissentals. 6 had wanted to rehear. Judge Oldam said the case involved "undeniable" burdens

on religious freedoms based on their clear religious beliefs. He said the panel's "substantial burden analysis poses a particularly acute risk to minority faiths." And "the better approach is to apply the same standards to all people." He warned about native religious practices being treated differently. Judge Ho's dissental agreed, and emphasized that "[o]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

- *Ariz. Mining Reform Coal v. U.S. Forest Serv.*, 170 F.4th 879 (9th Cir. 2026) (distinguishing *Mahmoud* and applying *Lyng* as about "incidental interference with spiritual activities" not amounting to coercion)
    - Facts: Follow up to Apache Stronghold. About land exchange involving a copper deposit in Arizona. Plaintiffs sued with APA claims, NEPA claims, Land Exchange Act claims, and RFRA and Free Exercise claims. Plaintiffs sought injunctions to block the land transfer.
    - Holding: the land transfer does not violate religious liberty rights because *Apache Stronghold* is binding precedent. Affirming the denial of the preliminary injunction.
    - Reasoning: On the religious claims, saying the en banc *Apache Stronghold* decision foreclosed any more arguments here and that *Lyng* applied, saying no strict scrutiny if a property disposition does not: 1) have a tendency to coerce action contrary to religious beliefs, 2) discriminate against religious adherents, 3) does not penalize them, and 4) does not deny "an equal share" of the privileges enjoyed by others. Rejecting the claim that *Mahmoud* "abrogated *Apache Stronghold*" by changing the meaning of a "religious burden." (trying instead to apply the "very real threat" framing). Distinguishing *Mahmoud* as in the education context and about policies "that directly coerce or indirectly compel behavior at odds with individual religious beliefs or practices."
        - Saying *Lyng* is about "incidental interference with an individual's spiritual activities" as opposed to coercion.

Parents rights:

Upcoming SCOTUS case touching on standing and parental rights: *International Partners for Ethical Care v. Ferguson*, oral arguments to be heard December 7, 2026

Several cases have been wrestling with the meaning of the *Mahmoud* case from last term.

- *Mirabelli v. Olson* (also includes Substantive Due Process questions)

- Facts: certified class of parents and teachers for a class action against the CA Superintendent, CA Board of Education, and the State AG. The parents and teachers seek an injunction about 1) parents being informed about gender information based on their constitutional rights and 2) teachers being able to voluntarily disclose gender identity information to parents.
- District Court – 820 F.Supp.3d 1123 (S.D. Cal Dec 22, 2025). Judge Roger T. Benitez.
    - About parents: saying parental exclusion policies presume that the parents will be harassers and must be protected against. This is a "derogation" of parental rights, which are grounded in the 14th Amendment due process clause. He says it is not the parents asking "for a magnanimous exemption," but that they are the ones with "enduring federal constitutional rights" that the "zone of secrecy" in these policies violate. He notes that *Mahmoud* applies to affirm parental free exercise rights here as well, when a sincere religious belief is in play.
    - About teachers: saying it is not a hypothetical burden on teachers' religious beliefs to demand this and not give them an accommodation and to retaliate against them. One was told if she could not follow the policy "you may have to find a different job." On free speech, the court says this is a tricky case because of the government speech involved in the classroom, but he then says because there is compelled speech that violates parental rights, then it cannot be forced upon teachers who conscientiously disagree.
- Ninth Circuit: Put an Interlocutory stay on the permanent injunction as to both teachers and parents that was issued by the district court during the pendency of the appeal. Saying "we have serious concerns with the district court's class certification and injunction that covers every parent of California's millions of public school students and every public school employee in the state."
- Supreme Court – granted the application to vacate the Interlocutory Stay Order of the 9th Cir, but only with respect to the parents' rights, not the teachers' rights.
    - SCOTUS Holding: There is a likelihood of success on the merits based on free exercise and substantive due process.
    - SCOTUS Reasoning: As to free exercise, the Court said it was applying *Yoder* directly because the "unconsented facilitation of a child's gender transition" is a greater "intrusion on parents' free exercise

rights" than the facts in *Mahmoud* were. Also saying there is a failure of narrow tailoring. As to substantive due process, saying "parents—not the State—have primary authority with respect to 'the upbringing and education of children." (citing *Pierce* and *Meyer*). Decisions about children's mental health is part of this. Then saying the denial of these rights during the long appellate process "constitutes irreparable harm."

    - 9th Circuit – now considering the merits.
- *Miller v. McDonald* 2d Cir case was GVRed on Dec 8, 2025 based on *Mahmoud's* application to its facts. The Second Circuit upheld the law again June 30, 2026, *Miller v. McDonald*, 180 F.4th 420 (2d Cir. 2026).
    - Facts: the case is about the 2019 elimination of nonmedical/religious exemptions for school vaccinations, which deeply affected the Amish community.
    - The Supreme Court gave no written opinion, but seemed to at least be saying that *Mahmoud* can be relevant more broadly beyond what children are taught and including what the state requires in other ways.
    - On remand, the 2d Circuit again upheld the NY law allowing only medical exemptions for vaccines. It said the mandate was religiously neutral (a valid and neutral law of general applicability), based on an interest in preventing communicable disease. Therefore it easily passed rational basis review.
    - For *Smith* analysis, the 2d Circuit said the law was neutral because it does not "target or affirmatively prohibit religious practices." The history also does not "reveal an anti-religious bias," (428) and bad motives by a few legislators doesn't change that (429). The medical exemption was not comparable (430), and there were no broad individualized exemptions. (431).
    - For *Mahmoud* analysis, the 2d Circuit focused on the nature of the burden, saying it was different from *Mahmoud*. It interpreted the *Mahmoud* prohibition on interfering with religious development as distinguishable because the NY law here "does not regulate what children are taught, does not require them to affirm any belief, does not expose them to state-selected instruction contrary to their parents' faith, and does not enlist school officials to displace parental religious formation." (432-33). It characterized the requirement as just "a health-and-safety condition on in-person school attendance to reduce the spread of communicable disease." (433)
    - It also dismissed *Mirabelli*, saying that did mean *"Mahmoud* reaches beyond curriculum," but distinguishing *Mirabelli* as about "displacing the parents' role" in "their child's identity and upbringing." (433).

- *Doe v. Bethel Loc. Sch. Dist. Bd. of Educ* (6th Cir. Aug 6, 2025)
    - Facts: about a bathroom policy allowing trans students to use bathrooms matching their gender identity. Muslim and Christian parents and students sued, claiming it violated their religious beliefs about modesty and separation of sexes. The school district built a gender neutral restroom, but kept the policy. The student is no longer there and the policy is not maintained, so just looking at entitlement to damages; other relief is moot.
    - Holding: the policy was neutral and generally applicable, and subject to rational basis review; the policy did not violate parents' due process right to direct the upbringing of their children, and the parents are not entitled to damages.
    - Reasoning: Parents claim a burden because the policy "undermined religious parents' commitment to keeping their kids from sharing intimate spaces with the opposite sex" based on *Mahmoud*. But the court said that "exception does not apply here" Because the burden is not of the same character. "[T]he bathroom policy was neither compulsory nor instructional." Then applying normal free exercise analysis and saying the policy is neutral (because it did not restrict religious practice "because of its religious nature" and was not targeting religious conduct) and generally applicable (because it did "not differentiate between religious and secular conduct" and did not provide for "individualized exceptions."). And saying it passes rational basis review.
- *Alan L. v. Lexington Pub. Sch.*, (D Mass Dec 30, 2025, and then July 21, 2026) (holding a parent could opt out, after school had pushed back and said the request was not specific enough, but didn't give him access).
    - Facts: Father of kindergartener contacted the school asking to review the curriculum for health and DEI classes, and asking for opt out. The director of elementary education said a request had to clearly identify the required curriculum or material at issue. The father submitted a public records request for curriculum information, but did not receive it. So he requested to be opted out of activities that "cover issues of sexual orientation or gender identity," and asked to be notified in advance about such lessons. The director once again sasid his request "lacked sufficient detail." Legal counsel then sent a letter, and the director sent a link to the health curriculum, and he learned what had already been covered. He filed suit. In the December opinion, court issued preliminary injunction, holding *Mahmoud* directly applied. Then defendants moved to dismiss
    - Holding: granted in part and denied in part.

    - Reasoning: On free exercise, saying *Mahmoud* applies because the books did teach messages contrary to his religious beliefs. But dismissing the substantive due process claim based on another 1st Cir case saying the degree of control over education was limited under that claim.
- *Mead v. Rockford Public School District* (WD MI, Aug 7, 2026) (initial order Sept 18, 2025, was after *Mahmoud,* denying free exercise violation based on a secret transition policy)
    - Facts: student wanted to use masculine pronouns and name at school, but parents not told because of the school's secret transition policy. When they discovered, they filed the lawsuit, saying the school violated their constitutional rights. School filed a motion to dismiss. Initially, the district court responded to Defendants' motion to dismiss by granting it in part (on free exercise) and denying it in part (on substantive due process parental right).
    - Plaintiffs filed a motion for reconsideration of its earlier decision after *Mirabelli*, which the court granted.
- *Woolard v. Thurmond*, 170 F.4th 701 (9th Cir. 2026) (originally filed Sept 11, 2025 and amended on March 23, 2026, after denial of rehearing en banc)
    - Facts: families enrolled in independent study programs at two CA charter schools, suing and claiming free exercise and free speech violations tied to the rejection of their requests to purchase sectarian curricular materials for instruction. DCt granted motion to dismiss for failure to state a claim.
    - Holding: 9th Cir. affirmed dismissal because 1) no free exercise violation and 2) no free speech violation because the curricular choice was government speech and not subject to strict scrutiny.
    - Reasoning: Funding and materials are not a generally available public benefit. Even if they are, the programs are "sufficiently public to allow California to condition participation on parents' use of secular curricula." (705). This is "part of the state system of public education"
        - Key factor: looking at "whether the independent study programs have the critical features that the Supreme Court found characteristic of public schools in *Carson*." The 9th Cir said *Carson* allows states to provide "a strictly secular education" and CA law requires it in Cal. Educ. Code §47605(e)(1).
        - Rejecting the compelled speech claim because public school curricular requirements are government speech (710).
    - Judge Bumatay wrote a Dissental to the denial of en banc review (joined by 4 others). He said this program itself is focused on choice for parents and

states that it is to provide "flexibility through a homeschool model." Saying this is more like a benefit to aid private choices, that the panel misunderstood *Carson*, and that religious choices may not be excluded, meaning strict scrutiny should apply. Another Dissental by Judge VanDyke also said this is blatant discrimination against religion. He points out the Blaine Amendment itself is discriminatory.

- Release time and Equal treatment - 9th Cir DCt case: *LifeWise, Inc. v. Everett Public School Dist.* (W.D. WA, April 24, 2026)
    - Facts: LifeWise is an organization providing off-premise released-time religious instruction. It is in over 400 school districts nationwide, and involves kids going two days a week, with parental permission. LifeWise had several issues with the Everett School district, saying the newly imposed "check-in/check-out" guidelines were overly burdensome, that they were excluded from the Peach Jar flyer distribution, and that children's personal "religious materials" were targeted for different treatment. Parents and LifeWise staff sued, claiming free speech and free exercise violations.
    - Holding: the district court granted a preliminary injunction, requiring equal treatment.
    - Reasoning: even in a nonpublic forum, you still have to have "viewpoint neutral" and "reasonable" restrictions. This was violated in relation to these policies. Peach Jar and the resource fair were limited public forums, so no viewpoint discrimination allowed; different treatment of religious materials was free exercise violation; permission slip policy showed evidence of animus and hostility
    - This is great to see the district court apply these principles clearly and logically.
- Parent rights in custody battle: Montana Supreme Court: *In re the Marriage of Acacia Jensen and Timothy Jensen* (Mt. Sup. Ct. Aug 4, 2026)
    - Facts: Mother wanted to expose children to Liana Shanti and the Lemurian Mystery School, an online based spiritual mentor who promotes the recovery of suppressed memories. The record showed that the mother herself has engaged in it and has claimed memories of abuse with no evidence behind them.
    - Holding: 5-2 decision upholding trial court order modifying a parenting plan for a divorced couple that prohibited influence of a particular religious sect.
    - Reasoning: "While it is a constitutional right of a parent to provide spiritual education and teaching to their child, it is not the right of a parent to inflict abusive memories upon their child, be those memories fictional or

actual. This Court … cannot hold, then, that it is the constitutional right of a parent to expose their children to fictionalized sexual abuse"

- Implications: Dangerous because the court is really evaluating this religion. As the dissent points out, it is likely disadvantaging minority religions in a clear way… The dissent says it would be better to focus on harmful conduct, instead of this kind of restriction that prevents the mother from practicing her religion and educating her children about it.

- Parent rights in <u>custody battle</u>: Maine Supreme Court: *Bickford v. Bradeen* (ME Sept 1, 2026)
  - Facts: custody dispute over who has the authority to make decisions about child's religious upbringing and medical care when there is a conflict of views. The lower court judge determined that the father, who happened to be less religious, was "better situated…to evaluate the child's participation in religious activities."
  - Reasoning: The Maine Supreme Court said the judge should decide on medical and religious decisionmaking using the "best interests of the child" standard, not a strict scrutiny standard, because this is about between the parents after the standard of co-parenting failed, not about government action and "a state intrusion on that right." The parents share the constitutional right, so allocating the right among them inherently limits, but does not necessarily infringe, the individual parent's constitutional right. Therefore the best way to allocate is with a "best interest of the child" standard. In order to prevent raw preferences by a judge, the reviewing court can ask if the court failed to show "government neutrality between religion and religion, and between religion and non-religion."
  - Implications: This is interesting because it is about "splitting" the constitutional right, which is a bit of a strange concept. Custody disputes are always messy.

- **Substantive Due Process – 14th Amendment-based parents rights**
  - 1st Cir case on funding for special education services at private schools: *Hellman v. Dep't of Elem & Secondary Educ.,* 171 F.4th 69 (1st Cir. 2026).
    - Facts: challenge to state regulation about the provision of public funds for special education services in Massachusetts by parents of disabled children. Private school students can get services, but have to go to a public or neutral location, based on the Massachusetts Constitution provision that doesn't allow public aid to directly go to private schools. The parents sued, claiming it violates their due

process rights by interfering with their right to enroll their children in private school.
    - Holding: affirming the dismissal for failure to state a claim.
    - Reasoning: Federal law requires states to provide students with a free appropriate public education (FAPE). But the IDEA doesn't require identical treatment for kids in public and private schools. A proportionate share of IDEA funds do go to private schools, but state law maintains a plan for how to provide it, including regulatory guidance. Parents here are Jewish and want their son to receive an education informed by Judaism, but it is burdensome to transport him several times a week for services.
    - On substantive due process, the court says they examine if a fundamental right has been alleged, whether the government conduct restricted that right, and whether that restriction survives heightened scrutiny. They say the parents here may have met step one, but fail step two because the government has neither prevented nor penalized them for choosing private school. It has just applied terms for how it will provide publicly funded services. "the government may leave a constitutional choice available while declining to finance, facilitate, or administer that choice on the claimant's preferred terms." (80). It is not depriving them of the private school option. The court says it is not analogous to the *Trinity Lutheran* "equal benefits" line of free exercise cases. (83) The due process parental right protects the right to send a child to private school, but does not require "identical terms" for public benefits.
- *Brown v. Wash. Interscholastic Activities Ass'n*, (W.D. Wa, Aug 23, 2026)
    - Facts: claim that during Dec 2025 girls wrestling match, a transgender opponent sexually assaulted her. Mother claimed a substantive due process right to be given notice when there is a match against a transgender girl and a right to opt out of that competition without negative effect. Also claiming Title IX violations.
    - Holding: no likelihood to succeed on the merits.
    - Reasoning: Plaintiff claimed *Mirabelli* supported her claim, and the right "not to be shut out of decisions about their child's mental health, upbringing, and education." But the court said there is no substantive due process right to direct how extracurricular sports activities are handled, partly based on another 9th Cir case about a school bathroom policy that the parents did not have the right to direct. It

then said *Mahmoud* supports that conclusion, because while it allowed an opt out, it "did not give the parents the right to micromanage the public school curriculum." (citation modified). She may remove her child, but is not entitled to any other relief.

- **Foster Care**
    - *Wuoti v. Winters* case settled (Vermont), vacating the adverse lower court preliminary injunction ruling that had said the state policies were about the wellbeing of the child and did not violate free association, free exercise, free speech, and had not been targeted, but applied equally to all. The state now implemented a new policy to ensure that "[a]pplicants shall not be excluded based on [their religious] beliefs nor on an intent to live, parent, and make day-to-day caregiving decisions consistent with those beliefs." EX. A at 3."
    - *DeGross v. Hunter*, (W.D. WA, Apr 22, 2026)
        - Facts: Washington State added a licensing requirement for foster parents that required overt SOGIE support. A Christian couple wanting to renew their license were concerned about their renewal process because they did not want to use a child's preferred pronoun, which is required by WA Admin Code §110-148-1520(9). They were found ineligible to renew. After they sued in 2024, the state said they could have a partial waiver, with significant restrictions, that made them feel targeted and second class. They amended their complaint.
        - Holding: the district court denied the motion to dismiss free speech and free exercise claims
        - Reasoning on free speech: the court said the policy draws distinctions based on the message spoken and is viewpoint discriminatory.
        - Reasoning on free exercise: saying it is facially neutral because there is no reference to a religious practice, etc. BUT it is <u>not neutral</u> in relation to more subtle neutrality because you cannot impose regulations hostile to religious beliefs. In practice the policies "gerrymander to create unequal effect" and to exclude people of certain faiths. The court also notes that there are less restrictive means of promoting the welfare of LGBTQ children short of denying the application. Religious freedom may not come with a "special disability" applied "because of one's religion" (citing *Trinity Lutheran*). It is also <u>not generally applicable</u> because the code specifically allows for exceptions.
- Teacher Free Exercise:

- *Mirabelli v. Olson*: The Supreme Court did not address the teacher's rights yet, since it was an emergency application about the Ninth Circuit stay, not a merits decision. But the district court in California did address teacher free exercise rights.
- *John v. Aviles-Ramos* (E. D. NY Aug 17, 2026)
  - Facts: Jehovah's Witness special education teacher, making religious discrimination and free exercise claims. He objected to workplace requirements around birthdays and holidays, and was then terminated. He had to sing happy birthday, had to bring students to a Christmas party, and was told to take down a God is Love sign.
  - Analyzing the free exercise claim, the court said he had to show his religious practice was burdened and the policy was not neutral or generally applicable. It held he failed to show either. The court said the policy was neutral because it was not "directed at a religious practice" (citation modified). It held the policy did not meaningfully burden his faith based on a standard that burdened beliefs are only those "considered central or important to the plaintiff's practice of his religion;" if it "is peripheral," then burdening it is not significant. The court also rejected his disparate treatment and failure to accommodate claims.

Vaccination Cases

- *Lewis-Williams v. San Francisco BART* (9th Cir. Sept 11, 2026)
  - Facts: BART implemented a mandatory vaccination policy during Covid. Plaintiffs worked in jobs without a lot of interaction, but accommodations were denied. After a lawsuit, the case went to trial and a jury awarded over 7 million.
  - Holding: upholding the jury verdict.
  - Reasoning: The employees carried their burden to show failure to accommodate their religious objections. BART failed to show their objections could not be accommodated without undue hardship. Reliance on public health guidance is not dispositive of undue hardship. Citing *Groff,* the Ninth Circuit says "To prevail on its "undue hardship" defense, BART had to show that the alternatives to vaccination would be not only less safe, but less safe by a "substantial," "excessive," or "unjustifiable" margin." This is a fact specific inquiry. So even if their policy is "most effective," that doesn't mean other measures are "per se unreasonable accommodations." The court contrasts other cases where they found undue hardship, including those that

involved “frontline hospital workers” that involved “close contact and much higher risk to health and safety. “Title VII serves as a bulwark to protect the rights of conscience.”

- Concurrence by Judge Nelson (who also authored the opinion): raises the free exercise claim that the majority did not address. Saying it is concerning that the district court said the policy involved was generally applicable because there was not “unfettered discretion.” He points out that the free exercise doctrine under *Smith* is “a doctrinal hodgepodge” and that lower courts wrongly find laws neutral and generally applicable. He notes that religious objectors in this case were asked numerous questions that were then reviewed, often followed by an interview. He points out that the *FCA* en banc case already rejected the idea that *Fulton* requires “unfettered” discretion to apply, saying instead “that the mere existence of a discretionary mechanism to grant exemptions can be sufficient…” Also saying *FCA* clarified that judges should check if exemptions have been granted “in a viewpoint discriminatory manner.” He describes that there is a circuit split about whether *Fulton* requires discretion or unfettered discretion, and argues that the *FCA* standard is correct because when there is individual discretion at all, there is “the opportunity for a facially neutral and generally applicable standard to be applied in practice in a way that discriminates against religiously motivated conduct,” even if secular conduct is not clearly treated differently on its face.

- Covid-19 case: *Peterson v. Snohomish Regional Fire and Rescue* (9th Cir. 2025)– Title VII accommodation
  - Facts: 8 firefighters sued after religious exemptions from COVID-19 vaccine mandate were denied and they were placed on leave. SJ in favor of employer, finding undue hardship standard was met.
  - Holding: upholding lower court, saying that the govt proved they could not accommodate without a substantial burden. Petition for rehearing en banc was denied in Dec 2025.
  - Reasoning: The court said the fire department showed that it reasonably expected an undue burden because it showed that there was a high percentage of those requesting exemptions, a high risk of transmission in firehouse environment, and potential liability, etc.
  - Petition for cert pending – asking Court to clarify how an “undue hardship” should really be weighed under *Groff*.
    - The petition points out that there is a significant circuit split over whether the question of undue hardship can be answered by the

employer showing it reasonably believes an accommodation will inflict an undue hardship or whether the employer has to show the accommodation actually will impose such a hardship.
        - The petition says this must be clarified because diluting it to just a reasonable belief that it might be an undue hardship will act as a sort of "qualified immunity" that will significantly dilute *Groff*.
- *Weiss v. TPMG* (9th Cir. July 24, 2026) Judge Forrest opinion
    - Facts: Christian Jew denied religious exemption from COVID-19 vaccine mandate. The mandate required vaccination or valid exemption by deadline, then gave unpaid leave for 60 days, then terminated if no compliance. She requested and was granted an exemption, but then employer asked for more information, digging into details to evaluate consistency, concerned about insincere religious-exemption requests. She didn't answer every question, but did respond. They revoked her exemption and didn't respond when she asked about appeal process. She was terminated. She filed suit and Kaiser moved to dismiss, saying she had not "adequately notified TPMG of the conflict between her beliefs and its vaccine mandate." The district court granted the motion.
    - Holding: reversed and remanded
    - Reasoning: "Title VII prohibits employers from firing employees because of the employees' religion." Using burden shifting framework, which requires a prima facie case showing by the plaintiff (religious belief conflicting with duty, informed employer of conflict, employer threatened discharge because of inability to fulfill that job req). Here just looking at notice req.
        - Articulating a sensible approach: the employee has to give enough information about religious needs to show reality of conflict. "[C]onclusory assertions" are inadequate, but the standard cannot be too robust. It creates a problem if the employer "delve[s] into the religious practices of an employee" and evaluates if that is really required. (Citing 9th Cir case *Heller* where employee wanted to attend his wife's conversion ceremony, and the court said it was wrong for the employer to ask if the religion really "required him to attend the ceremony." Concluding the plaintiff met the notice requirement under Title VII. The employer should not have probed "sincerity" like it did. "The notice requirement measures only the sufficiency of the employer's information about the employee's religious beliefs or practices, not the validity of those beliefs and practices."
- *Braccia v. Northwell* (2d Cir. 2025):

    - Facts: healthcare workers were fired after seeking religious exemptions to Covid-19 vaccine mandate. They began a court battle over whether they should have been accommodated.
    - Holding: The district court dismissed the complaint and the Second Circuit affirmed the dismissal, holding that the accommodations requested would have violated NY's emergency rule. The parties petitioned the Supreme Court, asking if Title VII preempts state laws that ban religious accommodations, but the Supreme court denied cert.
- *Vesterman v. New York City Dep't of Educ.*, (2d Cir. 2026)
    - Facts: employee were denied a religious accommodation after objecting to the Covid vaccine mandate.
    - Holding: affirming the dismissal of the religious discrimination claim.
    - Reasoning: "Vesterman's claim triggers only rational basis review because she has not alleged that the DOE improperly scrutinized her religious beliefs or otherwise denied her request in a way that was not neutral towards religion nor generally applicable to all employees." Then applying rational basis review, the court said that she did not meet her burden to show that the DOE's claim that it was an undue hardship (based on the threat to health and safety) was wrong.
- *Bergin v. New York State Unified Court System*, No. 25-721 (2d Cir. 2026)
    - Facts: Bergin was a court officer, and requested an exemption from the COVID-19 vaccination requirement, which was denied. She failed to get vaccinated and was placed on leave and ultimately terminated in April 2022. She sued under Title VII for failure to accommodate. The district court granted partial summary judgment in her favor, saying her request explained her religious belief and the employer failed to show undue hardship.
    - Holding: 2d Cir vacated the decision and remanded
    - Reasoning: The Second Cir applied a new test for the prima facie case as an initial matter in Title VII religious accommodation claims: The plaintiff shows: (1) she actually required an accommodation of hire religious practice, (2) that the employer's desire to avoid providing that accommodation was a *motivating factor* in the adverse employment decision (this does not require animus, but intent to avoid the accommodation; the employer's knowledge of a religious conflict can be relevant, but not dispositive of motive).
        - The test used to be: plaintiff needed to show: (1) a bona fide religious belief conflicting with a work requirement, (2) that she informed her employer of that belief, and (3) that she was disciplined for noncompliance.

    - Implications: Motive inquiries get messy quickly and tend to not be good for the plaintiff. This means that an employer, even if they know the actual religious conflict, can avoid responsibility if it had a motive for denying the accommodation that was not about wanting to avoid accommodation. This means Title VII religious accommodation claims now require proof of motive, which ads a disparate treatment overlay. It will involve more scrutiny of the reasons given for denying or limiting accommodations.
- *Perry v. Marteney*, (4th Cir. 2026)
    - Facts: WV compulsory vaccination law for schools – suit on behalf of daughters who are in a virtual academy, claiming religious exemptions were required by 1st A. The district court granted a preliminary injunction based on free exercise.
    - Holding: The Fourth Circuit reversed the PI and found no likelihood of success on free exercise.
    - Reasoning: the court reasoned that there is a larger social compact, and state police power includes reasonable regulations to protect health and wellbeing of children. Religious freedom does not override state authority in all circumstances, such as when the compelling interest is of "the utmost importance" such as to "reducing the spread and severity of infectious diseases." The state legislature does not have to compromise in a way that eviscerates protections. It also said for the free exercise claim, rational basis applies because the law is neutral and generally applicable, and the medical exemption neither involves discretion nor is an equivalent secular comparator. The dissent said *Mahmoud* should have applied.
- 7th Cir.: *Troogstad v. City of Chicago*, (7th Cir. 2025)
    - Facts: Chicago Fire Dept employee denied religious exemption during Covid-19 vaccine mandate time.
    - Holding: no free exercise violation. Also dismissing Illinois RFRA claim.
    - Reasoning: Pleading of free exercise violation is not exacting, but does have to move "beyond conclusory statements." He did not "allege facts about how his religious beliefs as a Christian conflict with the vaccine requirement" and had "numerous opportunities to satisfy this pleading standard."
- 7th Cir: *Snyder v. Chicago Transit Authority* (7th Cir. 2026)
    - Facts: bus driver who refused to comply with the COVID vaccine mandate after he was refused a religious exemption was fired.
    - Reasoning: The Seventh Circuit upheld the bus driver's firing. The court said his explanation of the religious reasons, and the letter from his minister were not adequate because he did not "connect this belief to any content in the

COVID vaccine that he was religiously obligated to avoid." So the court said a reasonable jury could not find that his grounds for objecting "were religious in nature."

- 7th Cir: *Kondilis v. City of Chicago*, (7th Cir. Dec 2, 2025)
    - Facts: Chicago employees were granted religious exemptions, but still had to participate in reporting requirements, including putting Covid test results into the employee portal.
    - Holding: The reporting requirement was legal.
    - Reasoning: The reporting requirements draw "no distinction based on religion" and apply to all employees not fully vaccinated. There is no religious animus evident at all. The allegation that it was applied inconsistently still didn't show that it "bore upon religion in some way," as there was no trend related to religion emerging from the evidence. The court then said clearly the reporting requirements meet rational basis during the global pandemic.
- 9th Cir.: *Detwiler v. Mid-Columbia Medical Center*, (9th Cir. 2025) (en banc review denied Apr 15, 2026).
    - Employee Title VII claim for religious discrimination over Covid-19 vaccine requirement. Plaintiff was fired after refusing to follow Covid testing protocols. DCt granted a motion to dismiss, saying she did not demonstrate a sincere religious belief against nasal testing, saying it was instead personal preference. The panel affirmed, saying she had to show a nexus between her religious beliefs and her objections.
    - Panel adopted a more restrictive pleading standard for religious discrimination in the exemption context, saying that it had to be grounded in "a truly religious principle." It evaluated whether her decision and judgment about the situation were "purely secular" and concluded it had "no relationship with her religious beliefs."
    - Dissents to the denial of rehearing en banc expressed concern: 1) Judge Forrest filed a Dissent (joined by 5 others), saying courts should not be determining the validity of employee religious beliefs and may not look into their logic or consistency level. She said some secular aspects to someone's thinking does not mean it is not religious. She is very concerned about courts "assess[ing] the reasonableness of religious belief." That will "embroil courts" in deciding what is "truly religious," which is a bad idea. 2) Judge Tung Dissent (joined by 6 others) also expressed concern that the panel "recharacterized" her claimed religious objection as "purely secular" because it also "turned in part on a secular consideration."

    - Implication: concerning if the logic of questioning sincerity that happens in vaccination cases get expanded out into other religious questions. Courts may be keeping the plaintiffs from getting consideration of their discrimination claim by cutting it off at the front end. They do so with the "parade of horribles" type worry (e.g., what if employees start claiming religious reasons to get out of everything?), but they may be over-restricting in the process (particularly outside of the pandemic context).
- *Cherry v. Wash. Dep't of Fish & Wildlife* (9th Cir. 2026) (about reasonable accommodation standards)
    - Facts: Dept granted religious exemptions but denied accommodation. Reassignment was offered, but with statement that opportunities were limited. Ultimately, only 14% resulted in reassignment, one of which was a job at 50% salary reduction. The complaint sought damages and injunction, not reinstatement.
    - Reasoning: offering something with a low success rate is not an actual accommodation. An employer must "reasonably accommodate" religious beliefs short of incurring an undue hardship. The accommodation requirement in the 9th Cir. means: an employer must "accommodate the religious beliefs of an employee in a manner which will reasonably preserve that employee's employment status, *i.e.*, compensation, terms, conditions, or privileges of employment." (*13 citation omitted). The employer needs to demonstrate "a good faith effort" (*16). The employee must then also "make a good faith attempt to satisfy his needs through means offered." *Id.* at *15. But this "concomitant duty" for the employee only arises after the employer has at least suggested a possible accommodation. *Id.* So the employer cannot just fail to engage or refuse to offer anything reasonable.
    - BIG PRINCIPLE ARTICULATED: "The statutory guarantee of religious accommodation provided by Congress in Title VII must be taken seriously and rigorously enforced by courts." (*24). Then confirming that the "undue burden" standard is a "fact-specific inquiry." (*25). Mere assertions are not adequate and must be supported by facts and evidence.

Religious schools:

- SCOTUS: *St. Mary's v. Roy* (cert granted, so we will see how this plays out)
    - Facts: a Catholic preschool's challenge to its exclusion from Colorado's universal preschool program, which reimburses the cost of up to 15 hours per week of preschool for all four-year-old Colorado children, for a school of the family's choice, as long as it is a participating school that meets the UPK

Program "quality standards." The standards include an "equal opportunity mandate." There are numerous exceptions for enrollment preferences schools are allowed to have, though Colorado says those exceptions may not be based on certain protected categories, including "religious affiliation, sexual orientation, gender identity," though there is evidence the state has granted requests to prioritize children that are part of the LGBTQ+ community. Colorado said the Catholic preschools involved did not qualify because they seek to work with their families to inculcate particular theological beliefs and require families to support the Catholic church, including in its teachings about biological sex and marriage. Catholic preschools expressed concern about the mandate, but Colorado refused a religious exemption, saying it would be "inconsistent with the statute."

- The questions presented are: 1) clarifying what general applicability under *Smith* really requires, and whether a party must show unfettered discretion or categorical exemptions for identical secular conduct. 2) whether *Carson v. Makin* displaces the rule of *Smith* only when the government explicitly excludes religious people and institutions.
    - This could be a very important case to hopefully further narrow *Employment Division v. Smith*, 494 U.S. 872 (1990), and to provide clarity on what the exceptions are to *Smith* that lead to the conclusion that a government action is not neutral or generally applicable (e.g., situations of animus, religious discrimination, parental rights, hybrid situations, excluding because of religious beliefs or exercise). The Supreme Court declined to take up the question of whether or not to directly overturn *Smith*.
    - These facts lend themselves to providing clarity specifically on access to public benefits and the *Carson* case's application. The 10th Circuit limited it to when there is an exclusion "on the explicit basis" of religion. A key question is 1) what does it mean to exclude on account of religious exercise so that the *Trinity Lutheran* and *Carson* line of cases apply (and *Smith* does not). But if *Smith* applies, then other key questions involve the application of the neutral and generally applicable standard: 2) what makes something a secular comparator to see if it is being treated more favorably such that *Tandon* applies?; and 3) what does discretion to grant exemptions look like that means strict scrutiny will apply under *Fulton*?
    - <u>Framing matters tremendously</u>: 1) Is it a government attempt to exclude disfavored religious exercise, or is it just the government's

effort to promote a compelling interest unrelated to religion that just incidentally burdens religion (not targeting based on or because of religion, as Colorado argues)? 2) Is it treating religious groups (not allowed to favor based on religion) differently than secular groups (allowed to favor based on income-level, disability, or identity-based factors), or is it treating them all the same because none can use religious criteria?

- *St. Dominic Acad. v. Makin*, 181 F.4th 11 (1st Cir. 2026) and *Crosspoint Church v. Makin*, 180 F.4th 354 (1st Cir. 2026) (Follow up cases to *Carson v. Makin*). Testing "the intersection" of two state statutes—the tuition assistance program and the Maine Human Rights Act, its nondiscrimination statute that applies to education among other things. Religious schools are exempted from the MHRA rules if they do not receive public funding.
  - *St. Dominic* held that Maine's Religious Expression Rule, requiring schools to permit religious expression equally for all religions violated the school's free exercise rights because it singled out religious expression. But it held that the nondiscrimination rule prohibiting religious discrimination did not violate free exercise because it applied equally to all schools and the limits were unrelated to religious exercise. It also held the Gender Presentation Policy requiring use of preferred pronouns and dress consistent with gender identity, applying to all publicly funded schools, including religious ones, did not violate free exercise.
  - In *Crosspoint*, the school also challenged the amendments after *Carson* as targeted and therefore violating free exercise (the amendments added religion as a category in the education section, and narrowed the religious exemption from the bar on sexual orientation and gender identity discrimination only to non-state-funded organizations). The state claimed it was just aligning the education protections with the employment and housing protections in the MHRA, and that it is just expecting all schools to play by the same rules that ensure equal treatment. The court analyzed it under *Smith* with a neutrality analysis, dismissing evidence of animus, saying the state offered logical reasons, and saying that all private schools were subject to the non-discrimination standards (362-63)

- 6th Cir: *Wilberforce Academy of Knoxville v. Knox County Board of Education*, (E.D. TN May 22, 2026)

- Facts: Challenge to state laws requiring publicly funded charter schools to be nonsectarian and nonreligious. Plaintiff wanted to open a Christian charter school, but its letter of intent was rejected because it could not affirm it was not a "religious or church school." It did not then apply, but filed suit, challenging the nonsectarian requirement. Defendants moved to dismiss on standing because no application had been filed, but the suit was allowed to continue.
- Holding: Allowing the suit to continue forward
- Reasoning: standing present because they showed a concrete interest in being able to apply and compete on equal footing with secular schools – so live case or controversy.

Church Autonomy

- SCOTUS denied Cert in *USCCB v. O'Connell* in May 2026
  - Facts: Catholic parishioner alleged that there was fraud in how money was collected for the Peter's Pence fund. We argued in our amicus that church autonomy, based on the religion clauses, should have applied to provide an immunity from suit, not just a defense to liability. We therefore said interlocutory review should be available.
  - This was an appeal of a denial of a motion to dismiss, so the difficulty to overcome collateral order doctrine was in play when the DC Circuit considered it. The motion to dismiss was not considered a final judgment, so the DC Cir dismissed for lack of appellate jurisdiction. But then it considered the substance as well.
  - Concern was that the court said it could proceed with "neutral principles of law," rather than recognizing the application of church autonomy to dismiss the case.
- *Lutheran Church-Missouri Synod v. Christian*, (5th Cir. June 4, 2026)
  - Facts: about diversity jurisdiction and a dispute between the Lutheran Church Missouri Synod and a Lutheran college, Concordia University. It asked what the proper entity was and if that changed it from diversity jurisdiction, requiring a state court suit.
  - Holding: reversing the district court's decision that the suit should be dismissed in part.
  - Reasoning: the district court wrongly overlayed a secular corporate law interpretation on the church's governance documents, then imposing Texas law about unincorporated associations on the Lutheran church. This violated church autonomy. The way the court imposed its own interpretation changed

the meaning of the governing documents, denying the church's ability to define itself.
    - Implications: complexity continues in terms of how court apply the church autonomy doctrine. This opinion involved three judges and three opinions.
- Nevada Supreme Court: *Singh v. Second Judicial District Court of Nevada*, 586 P.3d 858 (Nev, Apr 2, 2026)
    - Facts: the Northern Nevada Sikh Society was sued by some of its members, claiming its management committee breached its bylaws when they took certain actions. The NNSS management moved to dismiss, claiming church autonomy. This got up to the Nevada Supreme court and they took the writ to consider it, saying it is an important constitutional question that must be answered before the case proceeds. They then went on to say the "neutral principles of law" exception to the ecclesiastical abstention doctrine (church autonomy) could apply in this case, agreeing with the Ninth Circuit reading of that exception.
    - Implications: This is now on petition for cert to the Supreme Court. It is a straightforward case about the church autonomy doctrine and how broadly the "neutral principles of law" exception should apply.
- Ecclesiastical Abstention doctrine in a church property dispute: *French Broad United Methodist Church v. Holston Annual Conference of the United Methodist Church*, 2025 WL 3046201, (TN Ct. App. Oct 31, 2025)
    - Facts: local church sued its parent body. Claims about ownership of property it used as a parsonage. Challenging provision that local church properties were held in trust for the benefit of the denomination.
    - Holding: barred by the ecclesiastical abstention doctrine.
    - Reasoning: "long lineage of cases clearly indicates" that the abstention doctrine should apply. The court may not evaluate and interpret church governance documents. Church property disputes do allow some court involvement, but not when they involve the application of religious doctrine or polity, in which they should defer to the interpretation of the highest court of a hierarchical church organization.
    - IMPLICATIONS: Even in church property disputes, courts have to be careful not to evaluate church doctrine.
- **Ministerial Exception**:
    - *Belya v. Kapral* (2d Cir. 2026)
        - Defrocked priest in Russian Orthodox Church Outside of Russia (ROCOR) sued church leaders and church entities for defamation
        - Ministerial exception applies

- *Davenport v. Episcopal Health Services, Inc.* (ED NY, Feb 5, 2026)
    - Facts: A student chaplain was participating in a clinical pastoral education program at the hospital. He claimed the hospital failed to compensate him for overtime counseling.
    - Holding: dismissing the complaint; the ministerial exception bars Title IX and FLSA claims by student chaplain in Episcopal hospital.
- *Zan Sun v. Shen Yun Performing Arts, Inc.*, (SD NY May 18, 2026)
    - Facts: lawsuit by employees of performing arts group, claiming abuse.
    - Holding: ministerial exception does not apply to provide a general immunity from secular laws for religious organizations. Allowing allegations of abuse, control and confinement to advance.
    - Reasoning: Employees adhere to Falun Gong's teachings, and the organization claims to be like a church, with its employees personifying its "faith message in outward-facing functions." The purpose of the ministerial exception is "to ensure religious institutions can control matters of church governance, including the selection and termination of its ministers." The district court said "when facts of a particular case do not implicate 'matters of faith and doctrine' or 'matters of internal government,' the ministerial exception does not apply." *Id*.
- 5th Cir. DCt: *Obienu v. Archdiocese of New Orleans* (ED LA, Dec 11, 2025): District Court says a priest's Title VII claim against the archdiocese was barred by the ministerial exception doctrine because it arises "out of a disgruntled former priest's dissatisfaction with how [the ANO] managed his role as a minister with its system of religious governance." It cites to *McRaney v. N. Amer. Mission Bd.* (5th Cir. 2025), which explained the church autonomy doctrine barring lawsuits about internal religious leadership and ministry decisions, including tort claims.

- Going beyond the Ministerial Exception with co-religionist hiring - *Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190 (Jan 6, 2026) (by Judge Bumatay) [VACATED for en banc reahearing]
    - Facts: UGM requires its employees, both ministerial and not, to agree with and live out its religious beliefs and practices, including re sexual conduct. Its policy is based on its religious beliefs and tied to its mission. The applicants are told ahead of time and have to sign a commitment. UGM brought a pre-enforcement action against Washington state because of the interpretation of its civil rights law and how it is likely to interfere with its employee standards.

    - Holding: The original panel affirmed the Preliminary Injunction prohibiting the enforcement of WLAD against UGM for preferring and hiring co-religionists for non-ministerial roles. But its decision has been vacated for reahearing en banc, and oral arguments were held Sept 29.
    - Reasoning of the original panel: UGM is likely to succeed on the merits of its claim that enforcing WLAD against it for hiring only co-religionists violates the First Amendment. Church autonomy is more than just ministerial exception. "The First Amendment may also shield religious institutions' hiring of non-ministerial employees when it involves matters of faith and doctrine." The court is concerned that "if state law were to prevent religious institutions from employing only co-religionists, those institutions could be forced to hire employees who openly flout and disagree with their religious principles. This, the First Amendment doesn't tolerate." This principle that goes beyond the ministerial exception, however, is limited to religious organizations, and is limited to only hiring decisions based on religious beliefs, not on any other distinctions. It is only necessary to address here because of how Washington has narrowly construed its state law, so the First Amendment protections must be acknowledged. Internal management decisions of religious organizations may include their "policy of hiring coreligionists for non-ministerial roles."
- Scope of Clergy-Penitent Privilege: defined by AZ SCt in *Rodriguez-Ramirez v. State of Arizona*, AZ Sup. Ct.
    - Facts: conversation by a pastor with his co-pastor discussing sexual impropriety he committed not protected because not a "confession."
    - 4 part test adopted:
        - (1) Is the person who received the confession a clergyman or priest as defined by the church's customs and laws. This is not limited to members of religious organizations with ordained clergy.
        - (2) Was the confession made while the clergyman or priest was acting in his professional capacity?
        - (3) Was the confession made in the course of discipline enjoined by the church to which the clergyman or priest belongs?
        - (4) Was the communication at issue a "confession"?
    - Confession covered if "the communication sought spiritual absolution, consolation, or guidance."
        - Court saying this is not about evaluating theology, but asking a factul question about what the communication was for.

- Applied to these facts, the court said the purpose was about the church's reputation/practical consequences, and was not about seeking absolution nor intending confidentiality, therefore not constituting a "confession."

Association (tying it all together – really relates to all of it)

- *St. Mary's v. Roy* (10th Cir.) (detailed above): This case, out of the 10th Circuit, was granted cert, and will come before the court next term.
- 9th Cir – *Fresenius Medical Care v. Bonta*, (9th Cir. Apr 7, 2026)
  - Facts: Dialysis providers sued under the 1st Amendment about CA A.B. 290, challenging 1) a cap on reimbursement rates for dialysis providers who donate to charities, 2) a patient disclosure requirement, 3) a financial assistance restriction, and a couple more.
  - Holding: the 9th Cir struck down parts of the CA law, saying the charitable contributions are 1st Amendment protected "either as association or speech."
  - Reasoning: The Ninth Circuit rejected that disclosure requirements are different and said whether there is an overt intent to chill "is immaterial" to whether the law has a deterrent effect on the First Amendment right. It also rejected that some contributions are less expressive, saying if they are expressive at all, then associational rights "are not merely incidentally burdened." Therefore "exacting scrutiny" applies. The court said the Patient Disclosure requirement violates the associational rights of patients. It also said the financial assistance restriction violates expressive association rights because *Dale* protects against forced inclusion of people in a group, so they should be able to include only the patients that fit their "desire as an expressive charity to include primarily ESRD patients undergoing dialysis." While the court said a few provisions were non-objectionable, it said other unconstitutional provisions "cannot be severed."
- 9th Cir. - *Youth 71Five v. Williams* – reissued an amended opinion on Nov 26, 2025, superseding the August opinion.
  - Facts: An Oregon grant program funds community organizations serving at risk youth. 71Five had received grants for many years, including ofr its "Break the Cycle" mountain biking initiatives. In the grant application process, it had to certify that it was in compliance with polices. There was a new policy requiring nondiscrimination in hiring, including based on religion. They signed the certification because it thought its practices were constitutionally exempt, but when the state found out, they withdrew the grants they were

going to offer. 71Five sued, claiming violations of free exercise, autonomy, expressive association. The district court denied a preliminary injunction.

- Holding: The Ninth Circuit affirmed the denial of the preliminary injunction; the state may require 71Five comply with its nondiscrimination standards in relation to the funded initiatives. It found, however, that the ministry's hiring was protected for initiatives that don't get government funds.
- Reasoning:
  - Free Exercise: Saying there was no free exercise violation because the standards were neutral and generally applicable, and no hostility was shown. It rejected that 71Five was excluded because of its religious character, so *Trinity Lutheran* did not apply either.
  - Church Autonomy: saying this does not come into play because it is only an affirmative defense, and cannot be a standalone claim.
  - Expressive Association: Saying there is a burden, but the context can change whether it is permissible. For the funded activities, the court first implies that it is government speech, using conduits to accomplish its goals. But the court then addresses the parties' main arguments, and says if it is a limited forum, the government can still control its purpose and restrict use. Citing *Martinez,* the court concludes the nondiscrimination rule is a "reasonable and viewpoint neutral regulation of expressive association in a limited public forum." This collapses free speech analysis into expressive association, confusing the standards like *Martinez* did. The court does say, however, that for non-funded activities, then the *Dale* association rights mean they can have their religious requirements.
- Implications: this feels contradictory in terms of how it understands a limited public forum versus government speech. It is unhelpfully suggesting that when something is government funded, then First Amendment rights are reduced.

Other Statutory Issues

- RFRA
  - *United States v. Safehouse* (3d Cir. 2025)
    - Facts: A nonprofit, although not established as a religious organization, claimed it had religious reasons for giving limited drugs to people in order to help them overcome addiction. A district court initially said its activities did not violate federal law. The Third Circuit

reversed, saying their actions did violate the law. On remand, the district court rejected the RFRA and Free Exercise counter claims, stating that non-religious entities are not protected.
    - Holding: the Third Circuit reversed, stating that RFRA and the Free Exercise clause do extend protections to organizations, including non-religious entities like Safehouse. This is based on the definition of "person" in RFRA.
    - Reasoning: the court said it was expressing "no view about whether threatened prosecution of Safehouse substantially burdens its exercise of religion." They were looking only at the threshold issue of whether it was possible to make such claims.

- RLUIPA

Prisoners

- *Landor* (described above)
- *Baltas v. Jones* (2d Cir. Dec 15, 2025): Prisoner case, but only free exercise claim instead of RLUIPA, so the court only applies the reasonableness test.
- 7th Cir: *Smith v. Pugh*, (7th Cir. 2026)
    - Facts: Muslim inmate claimed RLUIPA right violated when prison authorities refused to provide him heat bags or a way to warm his meal during Ramadan.
    - Holding: his rights were not violated
    - Reasoning: He claimed it burdened his religion and pressured him to break his fast. He claimed IBS symptoms coincided. The Court says the medical records undermine his argument. He reported IBS symptoms during and after his fast. Lay testimony alone cannot establish causation of a medical condition.
- *Ruiz v. Nevada Depto f Corrections* (9th Cir. Oct 20, 2025)
    - Facts: Messianic Jewish inmate requested a diet of organic means, vegetables and fruit. He was denied. The District court said the defendants met their burden to show they used the least restrictive means of furthering their compelling interest of providing cost-efficient, simplified food service within their budget.
    - Holding: 9th Cir affirmed.
- *Goff v. Rode* (9th Cir. Aug 18, 2026)
    - Facts: wiccan inmate in AZ says prison officials violated his rights by confiscating his religious items, including a medallion and altar cloth.

Prison officials did not contest his sincerity. The district court dismissed the case.

- Holding: The 9th Circuit reversed. The 2-1 decision held that an inmate presented sufficient evidence to create a dispute that should go to trial.
- Reasoning: he showed substantial burden, and the RLUIPA claim should move forward. Remanding to determine qualified immunity.

- *Bryson v. Page* (SD GA, Sept 17, 2026): The district court dismissed a RLUIPA lawsuit, saying that a treatment center facility that was imposed as an alternative to a criminal sentence was not within the definition of an "institution" under RLUIPA, so it did not apply. Therefore the claim that the Jewish participant in the program was forced to participate in Christian activities in violation of RLUIPA failed. The court also dismissed the Establishment Clause claim, saying funds were given for a secular purpose and the defendant was unaware of the programming.

Land Use

- The Supreme Court has taken Cert in: *Grand v. City of University Heights*
  - Facts: An orthodox Jew wanted to have a minyanim (a gathering of at least 10 adult males) at his residence on the Jewish Sabbath and high holidays. He received a cease and desist order from the city and was told he had an illegal religious place of assembly under zoning requirements, saying he would need a special use permit to continue. He tried to comply, but received hostility, so withdrew his application, but continued to be targeted. He filed suit, but his suit was found not ripe because he withdrew his special use permit application before the administrative process was complete, so did not meet the finality requirement.
  - Key question for the Supreme Court: does a property owner have to complete a municipal permit process before challenging a restriction that chills First Amendment rights?
  - Implications: Our amicus argued that a credible government threat deterring religious exercise is a complete constitutional injury. The finality requirement does not extend to First Amendment injuries, because it was built for the takings clause, not First Amendment issues. We also argued the free exercise clause is violated if comparable secular gatherings in a residence are treated more favorably.
- *Missionaries of St. John the Baptist, Inc. v. Frederick*

        - Facts: RLUIPA challenge to a zoning denial of a permit for an association of Catholic priests to build a devotional shrine on their property. The case has gone through the Kentucky courts, with the Kentucky Supreme Court saying the permit denial did not place a "substantial burden" on their religious exercise.
        - They petitioned for cert.
    - *Lubavitch of Old Westbury, Inc. v. Incorporated Village of Old Westbury, New York* (ED NY, Oct 30, 2025): The district court ruled in favor of plaintiffs, holding that the Village's zoning ordinance, which treated religious exercise less favorably, was facially invalid because it failed strict scrutiny. The case then settled.

- Title IX
    - *Doe v. Albemarle County Sch. Bd.*, (W.D. Va, Nov 18, 2025)
        - Facts: a student filed for a TRO and preliminary injunction to stop the Turning Point club at their high school from hosting a particular speaker. The student claimed the school was violating Title IX's "deliberate indifference" standard by allowing the event that they claimed was by nature discriminatory.
        - Holding: the district court denied the injunction. It noted that the school board was navigating a complex, nuanced area of law, and that it had to balance important First Amendment rights against any potential discrimination claims.

- Title VII and other state nondiscrimination laws
    - *Zinski v. Liberty University* (4th Cir 2026) – had oral argument, but waiting on opinion) (about how broadly to interpret the religious employer exemption in Title VII in relation to non-ministerial employees).
    - Two cases about Maryland's employment nondiscrimination law:
        - *Doe v. Catholic Relief Services* (4th Cir. 2026) – had oral arg, but waiting on opinion (about the interpretation of the Maryland religious corporation exemption in its employment nondiscrimination law, and whether it applied to the termination of same sex spousal benefits).
        - *General Conference of Seventh Day Adventists v. Horton* (4th Cir. 2026) – had oral arg, but waiting on opinion (about a constitutional challenge to the Maryland Supreme Court's interpretation of the religious exemption as being limited to ministerial employees).

LEGISLATION:

Federal Efforts:

- We continue to work for the passage of the Equal Campus Access Act (H.R. 5505 / S. 2859)
- We have also supported the following:
    - The Pray Safe Act (S. 2947 / H.R. 5645): A bipartisan bill establishing a Clearinghouse through the Department of Homeland Security to provide resources and support for houses of worship and faith-based organizations wanting best practices to ensure safety and security.
    - The Fair Treatment of Religious Organizations Act of 2026 (H.R. 1817): protecting the First Amendment rights of faith-based institutions, ensuring that the IRS may not revoke the tax exemption for religious ministries or colleges that require its staff or board to share its beliefs and conduct standards related to marriage and human sexuality.
    - The Religious Workforce Protection Act (S. 1298 / H.R. 2672): a bipartisan bill seeking to advance free exercise of religion by providing flexibility to foreign-born religious workers who are subject to a lengthy backlog in the R-1 visa category. Now largely ameliorated by a DHS rule eliminating the requirement to spend a full year outside the U.S. before renewing visas.

State Bills (a sampling):

- Parental Rights:
    - Iowa: SF 473 – Foster Parent bill: Signed by the governor on June 2, 2026. Protecting foster care and adoptive parents, as well as religious organizations contracting with the state, to hold sincerely held religious beliefs, including about gender identity and sexuality, without being disqualified or penalized.
    - New Hampshire: HB 1376 – passed the House and Senate and waiting the governor's signature in early June, 2026. This bill clarifies that raising a child based on biological sex may not be considered child abuse or endangerment, saying state agencies and courts may not use that as grounds to remove a child, terminate parental rights, or refuse adoptions.
    - Oklahoma: HB 3586 – Parents Protection Act of 2026. Provides that prospective adoptive parents may not be denied based on their unwillingness to support gender transition. It also says that raising a child consistent with their biological sex does not constitute child abuse or neglect.
    - Tennessee: SB 1989. This bill, signed by the governor April 27, 2026, protects parent rights, saying a legal guardian may not be found guilty of abuse simply

because they raise their child based on biological sex or for refusing to use preferred pronouns.

- Medical Conscience rights:
  - Iowa: HF 571 – The Medical Ethics Defense Act. It was signed into law May 19, 2026, and says medical professionals who exercise their conscience in good faith should not be liable
- Gender
  - Tennessee SB 0468 – The Women's Safety and Protection Act. The law defines the terms "male" and "female" for purposes of state law in terms of a person's biological reproductive system.
- Education-Related bills
  - Iowa: SF 2231 – an Education bill covering several topics. Signed by the governor My 19, 2026, the bill expands Iowa's voluntary preschool program to include faith-based preschools, broadens eligibility for education tax credits, mandates professional development, and reinforces and protects K-12 students' right to freely express their religious, political and ideological viewpoints.
  - Kansas: SB 419 – Kansas Intellectual Rights and Knowledge (KIRK) Act: This expands free speech protections for college students, seeking to protect ideological and religious expression.
- State funding:
  - Oklahoma: SB 1307. Signed by the governor May 14, 2026, it removed a prohibition on the Oklahoma Historical Society from allowing the use of its funds for the preservation of religious institution buildings.

EXECUTIVE ACTION:

1. Update of the 2017 Sessions Memo on Religious Liberty, issued on July 23, 2026
   a. The memo emphasizes numerous First Amendment principles: 1) it affirms that religious liberty is more than personal belief but encompasses living it out in daily life. 2) It says the government cannot apply laws in discriminatory way in relation to religious exercise. 3) It affirms this administration's commitment to parental rights and religious organizational autonomy. And 4) it emphasizes RFRA's importance.
   b. In addition to the First Amendment, it clarifies what Title VII should be understood to mean in prohibiting religious discrimination and requiring religious accommodations. In describing the Religious employer exemption, it says:
      i. #20 says "Religious employers are entitled to employ only persons whose belief and conduct are consistent with the employers' religious precepts"
      ii. #21 says no conditions on grants that require relinquishing religious hiring or religious character

c. The memo emphasizes the government's values and gives guidance to agencies: It wants to make sure agency programs and actions comply with the Constitution, RFRA, Title VII religious exemptions, and other laws. It notes that in interpreting laws and religious liberty principles, that "historical practices" are key.
d. Specific guidance for agencies includes: 1) federal employers carefully following these principles in their own workforce; 2) in rulemaking, they should "proactively consider burdens on the exercise of religion and possible accommodations of those burdens." 3) in enforcement – agencies should make sure they act consistent with religious liberty. 4) in contract and grant distribution – agencies should give fair opportunity for religious organizations to compete without losing their identities or missions.
e. The Appendix then carefully summarizes constitutional protections based on recent caselaw, etc.

2. Religious Liberty Commission Draft Report in June 2026
    a. CLS submitted a letter on April 17, 2026, noting some things we thought they should include in their report. We focused on a couple religious liberty bills, the need to avoid RFRA carveouts, a suggestion that the DOJ's OCL draft a memorandum about the need to overrule *Employment Division v. Smith*, and requesting changes to the "Guidance on Constitutionally Protected Prayer and Religious Expression in Public K-12 Schools."
    b. CLS also submitted a comment in response to the draft report
3. On Federal Grants to religious organizations: OLC opinion of Aug 25, 2026 (by T. Elliot Gaiser and Joshua J. Craddock).
    a. Detailing why HHS restrictions on funding based on religious identity are not appropriate.
        i. Pointing out Establishment Clause Doctrine changes after *Lemon* was overturned.
            1. The religion clauses are not in conflict
            2. Rejecting the "**direct-indirect distinction**" in the idea of funding religious activities, saying that concept is really grounded in *Lemon*, which is no longer valid precedent… so shouldn't focus so much on the worry about people thinking there is endorsement.
            3. Looking to history and tradition.
        ii. Also noting there cannot be denominational preference.
4. On Religion in the workplace: OLC Opinion of Sept 18, 2025, 49 Op. O.L.C. __ (Sept 18, 2025). (by Lanora C. Pettit). "Memorandum Opinion for the Acting Chair, U.S. Equal Employment Opportunity Commission"
    a. Reiterating federal employees should not "be forced to choose between living out his or her faith and complying with the law." (3) Emphasizing the meaning of *Groff*'s change in standard:

        i. “under Title VII, an agency cannot deny a religious accommodation if the burden imposed on the agency by the accommodation in the context of the agency’s work is insubstantial.” (7)
    b. Accommodation details addressed later when talking about telework application: “Whether a particular accommodation is warranted in any given context is always a “fact-specific inquiry.” Groff, 143 S. Ct. at 2294; see also US Airways, Inc. v. Barnett, 535 U.S. 391, 405–06 (2002) (explaining that the reasonableness of a proposed accommodation turns on the “particular facts”)” (14)
    c. Rejecting the idea that it can be a significant burden because of worrying a reasonable observer might see ‘endorsement’: It says that the government employer should respect the freedom to engage in religious speech “to the greatest extent practicable and to the extent permitted by law,” Exec. Order No. 13798, 82 Fed. Reg. at 21,675, requires abandoning that unnecessarily restrictive test.” (8). Then articulating that what is most important is neutrality. But the employer can still prohibit things that are “disruptive or coercive” or that “interfere[] with its ability to perform public services.” (9).
    d. This was then also reinforce by AG Memorandum “Federal Law Protections for Religious Liberty” of July 23, 2026

5. Department of Education
    a. A coalition letter was sent April 27, 2026, from several high school ministries and advocacy groups that represent them detailing some suggested changes to the Guidance on Religious Expression in Public Schools that came out February 5, 2026.
    b. CLS and 1st Amendment Partnership submitted a public comment on “Accountability in Higher Education and Access Through Demand-driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability. We focused on the likely harm to religious programs at religious institutions of the new earnings framework and the need for a religious exemption, submitted on May 20, 2026.
    c. CLS submitted a public comment on the NPRM about the Education Department General Administrative Regulations (EDGAR) on Sept 23, 2026. We focused on the need to provide clear exceptions to the new merit-based requirements for grantees for religious standards of religious universities and colleges.
6. Department of Labor: CLS submitted a public comment in response to their request for information about potential barriers to faith-based organizations’ participation in DOL-funded or regulated programs, submitted on Feb 9, 2026.
7. CLS continues to partner with EPPC on some of their work to address regulatory action.