

2020 Annual Supreme Court Review

Written Materials and Resources

AUGUST 4, 2020



NATIONAL CONSTITUTION CENTER



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2020 Supreme Court Review

A Joint Virtual Presentation by ADL and the National Constitution Center

August 4, 2020

12:00pm – 1:30pm EDT

Agenda

1. National Constitution Center CEO Introduction
2. ADL Welcome & Introductions
3. Supreme Court – 2019 Term
 - Term Overview
 - Immigration and Refugee Rights
 - [*Department of Homeland Security v. Regents of the University of California/Donald J. Trump v. National Association for the Advancement of Colored People/McAleenan, Acting Sec. of Homeland Security v. Vidal*](#)
 - [*Department of Homeland Security v. Thuraissigiam*](#)
 - Religious Freedom
 - [*Espinoza v. Montana Department of Revenue*](#)
 - [*Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania/Trump v. Pennsylvania*](#)
 - [*Our Lady of Guadalupe School v. Morrissey-Berru/St. James' School v Biel*](#)
 - Discrimination: LGBTQIA+ Employment Rights and Title VII
 - [*Bostock v. Clayton County, Georgia/Altitude Express v. Zarda/R.G. & G.R. Harris Funeral Homes v. EEOC*](#)
 - Discrimination: Racial Discrimination
 - [*Comcast Corp. v. National Association of African American-Owned Media*](#)
 - Reproductive Rights
 - [*June Medical Services v. Gee*](#)
 - Presidential Subpoenas
 - [*Trump v. Mazars USA, LLP*](#)
 - [*Trump v. Vance*](#)
 - Native American Rights
 - [*McGirt v. Oklahoma*](#)
4. Looking Ahead
 - LGBTQIA+ Rights
 - [*Fulton v. City of Philadelphia, Pennsylvania*](#)
 - Voting Rights
 - [*Republican National Committee v. Democratic National Committee*](#)
 - [*Merrill, Al Sec. Of State v. People First of Alabama*](#)
 - [*Raysor v. DeSantis*](#)
5. Q&A

2020 SUPREME COURT REVIEW

Speaker Biographies



Photo of Erwin Chemerinsky

Erwin Chemerinsky

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law. Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 he was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political Science. He also has taught at DePaul College of Law and UCLA Law School. He is the author of 12 books, including his most recent, We the People: A Progressive Reading of the Constitution for the 21st Century (Picador 2018) and the forthcoming The Religion Clauses: The Case for Separating Church and State (with Howard Gillman) to be published by Oxford University Press in September 2020. He also is the author of more than 250 law review articles. He is a contributing writer for the opinion section of the Los Angeles Times, writes a regular column for the Sacramento Bee, monthly columns for the ABA Journal and the Daily Journal, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court. In 2016, he was named a fellow of the American Academy of Arts and Sciences. In January 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States. Chemerinsky holds a law degree from Harvard Law School and a bachelor's degree from Northwestern University.



Photo of Paul Clement

Paul Clement

Paul Clement is a partner in the Washington, D.C., office of Kirkland & Ellis LLP. Paul served as the 43rd Solicitor General of the United States from June 2005 until June 2008. Before his confirmation as Solicitor General, he served as Acting Solicitor General for nearly a year and as Principal Deputy Solicitor General for over three years.

He has argued over 100 cases before the United States Supreme Court, including *McConnell v. FEC*, *Tennessee v. Lane*, *Rumsfeld v. Padilla*, *Credit Suisse v. Billing*, *United States v. Booker*, *MGM v. Grokster*, *ABC v. Aero*, and *Hobby Lobby v. Burwell*. He has argued more Supreme Court cases since 2000 than any lawyer in or out of government. He has also argued many important cases in the lower courts, including *Walker v. Cheney*, *United States v. Moussaoui*, and *NFL v. Brady*. Paul's practice focuses on appellate matters, constitutional litigation, and strategic counseling. He represents a broad array of clients in the Supreme Court and in federal and state appellate courts. Following law school, Paul clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Associate Justice Antonin Scalia of the U.S. Supreme Court. After his clerkships, he went on to serve as Chief Counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights. Paul is a Distinguished Lecturer in Law at the Georgetown University Law Center, where he has taught in various capacities since 1998, and a Distinguished Lecturer in Government at Georgetown University. He also serves as a Senior Fellow of the Law Center's Supreme Court Institute.



Photo of Frederick M. Lawrence

Frederick M. Lawrence

Frederick M. Lawrence is the 10th Secretary and CEO of the Phi Beta Kappa Society, the nation's first and most prestigious honor society, founded in 1776. Lawrence is a Distinguished Lecturer at the Georgetown Law Center, and has previously served as president of Brandeis University, Dean of the George Washington University Law School, and Visiting Professor and Senior Research Scholar at Yale Law School. He was elected to the American Philosophical Society in 2018 and the American Law Institute in 1999.

An accomplished scholar, teacher, and attorney, Lawrence is one of the nation's leading experts on civil rights, free expression, and bias crimes. Lawrence has published widely and lectured internationally. He is the author of Punishing Hate: Bias Crimes Under American Law (Harvard University Press 1999), examining bias-motivated violence and the laws governing how such violence is punished in the United States. He frequently contributes op-eds to various news sources, such as Newsweek, The Boston Globe, the Observer, The Hill, the NY Daily News and The Huffington Post, and has appeared on CNN among other networks.

Lawrence's legal career was distinguished by service as an assistant U.S. attorney for the southern district of New York in the 1980s, where he became chief of the Civil Rights Unit. Lawrence received a bachelor's degree in 1977 from Williams College magna cum laude where he was elected to Phi Beta Kappa, and a law degree in 1980 from Yale Law School where he was an editor of the Yale Law Journal.



Photo of Dahlia Lithwick

Dahlia Lithwick

Dahlia Lithwick is a senior editor at Slate, and in that capacity, writes the “Supreme Court Dispatches” and “Jurisprudence” columns. Her work has appeared in the New York Times, Harper’s, The New Yorker, The Washington Post, and Commentary, among other places.

She won a 2013 National Magazine Award for her columns on the Affordable Care Act. She has been twice awarded an Online Journalism Award for her legal commentary and was the first online journalist invited to be on the Reporters Committee for the Freedom of the Press.

Ms. Lithwick has testified before Congress about access to justice in the era of the Roberts Court. She has appeared on CNN, ABC, The Colbert Report, and is a frequent guest on The Rachel Maddow Show.

Ms. Lithwick earned her BA from Yale University and her JD degree from Stanford University. She is currently working on a book about the four women justices of the United States Supreme Court.



Photo of Karen Levit

Karen Levit

Karen Levit is the National Civil Rights Counsel at ADL (the Anti-Defamation League), a non-profit organization dedicated to combatting bigotry, prejudice, and antisemitism. In her role, Karen leads policy and drives advocacy on civil rights issues including voting rights; criminal justice; security and civil liberties; and immigration and refugee rights. She provides specialized strategic, legal, and legislative guidance to staff around the country on civil rights issues and advocates for policies that further ADL's mission, including the need to secure justice and fair treatment to all. Prior to joining ADL, Karen served as a staff attorney in the Juvenile Rights Practice at the Legal Aid Society in New York. There, she represented young people in Family Court proceedings. Karen has spoken about juvenile law issues at the National Child Welfare Law Conference and at the Lavender Law Conference.

Karen earned her B.A. from the City College of New York magna cum laude where she was elected to Phi Beta Kappa. She earned a J.D. from the University of Pennsylvania Law School where she was an editor of the Journal of Constitutional Law.

ADL SUPREME COURT REVIEW 2020 CASES

Department of Homeland Security v. Regents of the University of California/Donald J. Trump v. National Association for the Advancement of Colored People/McAleenan, Acting Sec. of Homeland Security v. Vidal (Decided 6/18/20)

Issue: At issue in this trio of DACA cases consolidated by the Court was the Administration's decision to rescind the Deferred Action for Childhood Arrivals (DACA) policy. The DACA policy was created by President Obama in 2012 and granted work authorization and relief from deportation — subject to eligibility and agency approval — to undocumented immigrants brought to the United States as children before 2007. DACA recipients would be able to renew their status every two years. The Trump Administration's decision to rescind DACA disrupted the lives of almost 700,000 DACA recipients and their families, including 256,000 U.S. citizen children.

Judgment/Holding: In a 5-4 [decision](#) authored by Chief Justice Roberts and joined by Justices Ginsburg, Breyer, and Kagan in full, and Justice Sotomayor in part, the Court ruled that the Department of Homeland Security's decision to wind down DACA was reviewable, and that its decision to do so was arbitrary and capricious in violation of the Administrative Procedure Act (APA). Notably, the Court did "not decide whether DACA or its rescission are sound policies." All three cases were remanded in light of this decision.

ADL Brief: ADL joined an [amicus brief](#) supporting the challenge to the Administration's decision to rescind DACA. The brief described the significant reliance interest engendered in the areas of education, housing, and military service, and asked the Court to affirm the decision of the lower courts and enjoin the rescission of DACA.

Department of Homeland Security v. Thuraissigiam (Decided 6/25/20)

Issue: At issue was the level of due process to which a person seeking asylum at the border is entitled. Vijayakumar Thuraissigiam, a native Sri Lankan, had been placed in expedited removal proceedings. He expressed a fear of persecution in Sri Lanka, which was deemed not credible. Mr. Thuraissigiam then filed a habeas petition, arguing that the removal process to which he was subjected effectively suspended the writ of habeas corpus, in violation of the Suspension Clause. The Ninth Circuit ruled in his favor.

Judgment/Holding: Justice Alito authored the Court's majority [opinion](#). The Court ruled 7-2 against Mr. Thuraissigiam, holding that 8 U.S.C. § 1252(e)(2) — which limits the habeas review obtainable by a noncitizen detained for expedited removal — does not violate the Suspension or Due Process Clauses. Congress is entitled to set the conditions for a noncitizen's lawful entry into the country, and, as a result, a noncitizen at the threshold of

initial entry could not claim any greater rights under the Due Process Clause. Since Mr. Thuraissigiam attempted to enter the country illegally and was apprehended just 25 yards from the border, he had no entitlement to procedural rights other than those afforded by the statute. The decision was reversed and remanded.

Espinoza v. Montana Department of Revenue (Decided 6/30/20)

Issue: At issue was whether the First Amendment's Free Exercise or Equal Protection Clauses require states to fund religious education when states support private secular schools. The Montana Constitution contains a provision that provides for stricter separation of church and state than the First Amendment. Based on that provision, the state's Supreme Court struck down a tuition-tax credit program that on paper supported secular and religious schools, but disproportionately benefited faith-based institutions.

Judgment/Holding: In a 5-4 [opinion](#) authored by Chief Justice Roberts, the Court ruled that the state law unconstitutionally barred religious schools and parents who wished to send their children to those schools from receiving public benefits because of the religious character of the school. The judgment of the Montana Supreme Court was reversed and the case was remanded.

ADL Brief: ADL joined an [amicus brief](#) asserting that the Free Exercise Clause does not require states to fund religious education when they support private secular schools. The brief argued that longstanding U.S. Supreme Court precedent allowed states to provide for stricter church-state separation than the First Amendment requires. Furthermore, according to the brief, the Court's 2017 decision concerning public funding for a religious school's playground resurfacing materials should have no bearing on the case and only reaffirmed this principle.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania/Trump v. Pennsylvania (Decided 7/8/20)

Issue: At issue was the legality of new federal rules that provide broad religious and moral exemptions from the Affordable Care Act's contraceptive mandate requiring employer health insurance policies to cover prescription contraception for women without cost sharing.

Judgment/Holding: With Justice Thomas authoring the majority [opinion](#), the Court ruled 7-2 that the Departments of Health and Human Services, Labor, and the Treasury had authority under the Affordable Care Act to promulgate rules exempting employers with religious or moral objections from providing contraceptive coverage to their employees. The Court further held that it was appropriate for the Departments to consider the Religious Freedom Restoration Act (RFRA) in formulating the religious exemption and that the final rules were

not procedurally invalid under the Administrative Procedure Act (APA). The decision of the Third Circuit was reversed and the case was remanded.

ADL Brief: ADL joined an [amicus brief](#) asserting that the new exemptions were not authorized by RFRA and that they violated the Establishment Clause to the First Amendment. These discriminatory rules harmed women because they effectively allowed any employer, including public corporations, to opt out of the mandate. The prior rules already exempted houses of worship, religiously affiliated organizations, and small corporations.

Our Lady of Guadalupe School v. Morrissey-Berru/St. James' School v Biel (Decided 7/8/20)

Issue: At issue was the application of the First Amendment's ministerial employee exception, first recognized by the Court in 2012, to two teachers at different religious elementary schools. Grounded in the constitutionally mandated separation of church and state, the ministerial employee exception exempts religious institutions from all employment discrimination laws for employees deemed to be ministerial. The two elementary school teachers at Catholic schools in this case filed respective age and disability discrimination lawsuits, and the lower courts ruled that the teachers could move forward with the lawsuits because the ministerial exception did not apply to them.

Judgment/Holding: Justice Alito authored the Court's 7-2 [decision](#), holding that the ministerial exception foreclosed the adjudication of employment discrimination claims of the Catholic school teachers in these cases. Although the teachers were not given the title of minister and had less religious training, the religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do that work is at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate. The decision of the Ninth Circuit was reversed and remanded.

ADL Brief: ADL joined an [amicus brief](#) on behalf of neither party asserting that given the sweeping breadth of the exception, it should only apply where the totality of circumstances, considering all facts bearing on the ministerial nature of an employee's job, clearly demonstrate that the employee is a minister of the faith. Based on this standard, the brief concluded that the exception should apply to one teacher, but not the other.

Bostock v. Clayton County, Georgia/Altitude Express v. Zarda/R.G. & G.R. Harris Funeral Homes v. EEOC (Decided 6/15/20)

Issue: This case concerned the employment rights of three individuals, George Bostock, Donald Zarda, and Aimee Stephens, all of whom were fired for being LGBTQ+. The plaintiffs asserted that their employment termination was illegal under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination “because of...sex.”

Judgment/Holding: In a 6-3 [decision](#) authored by Justice Gorsuch, the Court held that an employer who fires an individual merely for being gay or transgender violates Title VII. However, the ruling leaves open the possibility that legal protections for an employer’s free exercise of religion, including RFRA, could change the legal analysis.

ADL Brief: ADL joined a coalition of 59 civil rights organizations on an [amicus brief](#) arguing that it was important that the Court recognize that Title VII protects LGBTQ+ Americans to prevent backsliding on existing Title VII protections against racial discrimination and other forms of discrimination — protections that depend on the same legal rules that the LGBTQ+ employees rely on in these cases. Doing so is consistent with the statute’s legislative intent, history, and statutory text. The brief argued that if the Court found otherwise, it would destabilize Title VII and its ability to root out workplace discrimination in other forms. The brief also highlighted that LGBTQ+ employees of color are among those in greatest need of Title VII’s protections. ADL previously joined amicus briefs at the appellate courts in *Zarda v. Altitude Express* and *Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes*.

Comcast Corp. v. National Association of African American-Owned Media (Decided 3/23/20)

Issue: At issue was whether under one of the oldest federal civil rights statutes — Section 1981 of the Civil Rights Act of 1866 — race discrimination victims must meet the burdensome “but-for” causation standard at the pleading stage instead of a more lenient “mixed motive” standard. The plaintiff, an African-American-owned television-network operator, alleged that the defendant, a cable television conglomerate, systematically disfavored 100% African American-owned media companies in violation of § 1981.

Judgment/Holding: Justice Gorsuch wrote the unanimous [opinion](#) of the Court that a plaintiff who sues for racial discrimination under 42 U.S.C. § 1981 must follow the usual rules, not any exception. To prevail, a plaintiff must initially plead and ultimately prove that, but for race, the plaintiff would not have suffered the loss of a legally protected right. A plaintiff bears the burden of showing that race was a but-for cause of their injury. While the materials the plaintiff can rely on to show causation might change as a lawsuit progresses from filing to judgment, the burden itself remains constant.

ADL Brief: ADL joined a coalition of civil rights organizations on an [amicus brief](#) arguing that the application of a “but-for” evidentiary standard would be inconsistent with the plain text, history and purpose of Section 1981. The brief discussed the continuing importance of Section 1981 – particularly for Black people and members of other marginalized communities – who continue to experience heightened discrimination. This case will clearly have far-reaching ramifications for anyone bringing a claim for racial discrimination.

June Medical Services LLC v. Russo (Decided 6/29/20)

Issue: This case challenged a 2014 Louisiana law imposing new requirements on abortion providers, including mandating that they have active admitting privileges at a local hospital. The impact of this law would have been that only one abortion clinic would remain open in Louisiana and there would be no physicians in the state providing abortions after 17 weeks. The central issue of the case concerned whether the Louisiana law conflicted with the precedent set in [Whole Woman’s Health v. Hellerstedt](#) in 2016.

Judgment/Holding: The Court split 4-1-4. Justice Breyer wrote an [opinion](#) holding that the Louisiana Statute was unconstitutional, with Chief Justice Roberts writing a separate concurrence. Roberts’ opinion, due to being narrower, is controlling. Although the Chief Justice accepted the precedent set in *Whole Woman’s Health* regarding the facts in this case, he reverted from the balancing test in that case to the more stringent rule in [Planned Parenthood v. Casey](#). Under *Casey*, a restriction on pre-viability abortion is unconstitutional if it imposes an “undue burden” or “substantial obstacle” on the person seeking the abortion. Under *Whole Woman’s Health*, an abortion restriction is unconstitutional if its burdens outweigh its supposed benefits – a balancing test. In *June Medical*, Chief Justice Roberts rejected this balancing test. As a result, courts now may not consider whether there are any actual benefits to abortion restrictions when determining whether such restrictions pose an undue burden or substantial obstacle. The decision of the Fifth Circuit was reversed.

ADL Brief: ADL joined with the National Women’s Law Center and 71 other organizations on an [amicus brief](#) urging that the law — an unmistakable challenge to [Roe v. Wade](#) — be found unconstitutional. The brief highlighted the actual burdens that the law imposes on reproductive rights and the resulting negative impact on equal participation in social and economic life. These burdens disproportionately fall on low-income women, women living in poverty, women of color, women who already have children, women subjected to intimate partner violence, and transgender and non-binary people. The right to liberty promised by the Constitution is denied when individuals’ reproductive rights are curtailed.

Trump v. Mazars USA, LLP (Decided 7/9/20)

Issue: At issue was whether congressional subpoenas seeking financial information regarding the president as a private citizen and some of his businesses implicated executive privilege or any other separation of powers issues.

Judgment/Holding: Chief Justice Roberts wrote the majority [opinion](#) in a 7-2 ruling. The Court held that, although executive privilege cannot be fully transplanted to cases involving nonprivileged, private information and therefore congressional subpoenas for the President's information may be enforceable, the court below in this case did not take adequate account of the significant separation of powers concerns implicated by subpoenas from the House of Representatives seeking President Donald Trump's financial records. The District of Columbia Circuit Court's order was vacated and remanded.

Trump v. Vance (Decided 7/9/20)

Issue: At issue in this case was whether the Constitution permits a county prosecutor to subpoena a third-party custodian for the financial and tax records of a sitting president over which the president has no claim of executive privilege.

Judgment/Holding: Chief Justice Roberts wrote the majority [opinion](#) in this 7-2 decision where the Court held that Article II and the Supremacy Clause of the Constitution do not categorically preclude, or require a heightened standard for, the issuance of a state criminal subpoena to a sitting president. No citizen, not even the president, is categorically above the common duty to produce evidence when called upon in a criminal proceeding. The judgment of the Second Circuit was affirmed, and the case remanded for further proceedings.

McGirt v. Oklahoma (Decided 7/9/20)

Issue: At issue was whether Oklahoma can prosecute an enrolled member of the Muscogee (Creek) Nation for crimes committed within the historical boundaries of the Muscogee (Creek) Nation reservation. Jimcy McGirt, a member of the Muscogee (Creek) Nation, was convicted of three serious sexual offenses by the state of Oklahoma for crimes that took place on the tribe's reservation. He argued that under the Indian Major Crimes Act, any crime involving a Native American victim or perpetrator, or occurring within recognized reservation boundaries, is subject to federal jurisdiction, not state jurisdiction. Therefore, Oklahoma could not exercise jurisdiction over him.

Judgment/Holding: Justice Gorsuch, [writing](#) for the 5-4 majority, held that for purposes of the Major Crimes Act, land throughout much of eastern Oklahoma reserved for the Creek Nation since the 19th century remains a Native American territory. Once a reservation is established, it retains that status until Congress explicitly indicates otherwise, and Congress's actions during the allotment era did not end the Creek reservation. Moreover,

historical practices and demographics are not enough by themselves to prove disestablishment. The judgment of the Court of Criminal Appeals of Oklahoma was reversed.

Language note: Although the Supreme Court decision refers to the tribe as the Creek Nation, the tribe refers to itself as the Muscogee (Creek) Nation.

Fulton v. City of Philadelphia, Pennsylvania (3rd Circuit: decided 4/ 22/19; pending before SCOTUS)

Issue: After the City of Philadelphia (the City) learned that certain of its foster care providers, including Catholic Social Services (CSS), would not license same-sex couples to be foster parents, the City ceased referring children to these agencies. CSS subsequently sued the City, arguing that it had a constitutional right to reject qualified same-sex couples as a matter of free exercise of religion.

Judgment/Holding: The Third Circuit [ruled](#) that CSS was not entitled to a preliminary injunction on its First Amendment Free Exercise claim challenging the City's cessation of foster referrals because the City acted in a neutral way to enforce its non-discrimination policy. The organization failed to make a persuasive showing that it was targeted by the City for its religious beliefs or that the City was motivated by ill will against CSS's religion rather than a sincere opposition to discrimination on the basis of sexual orientation. Moreover, the District Court did not abuse its discretion in also finding that the organization had not shown a likelihood of success on its Establishment Clause claim because there was no evidence that the City's actions were a veiled attempt to coerce or impose certain religious beliefs on the organization.

ADL brief: ADL filed an [amicus brief](#) in the Third Circuit in support of the City on behalf of a broad coalition of religious and religiously-affiliated organizations. The brief asserted that freedom of religion, enshrined in the Free Exercise Clause of the First Amendment to the United States Constitution, as well as numerous federal, state, and local anti-discrimination laws, is a shield intended to protect the free exercise of religion for all, not a sword that can be used to impose religious beliefs on or discriminate against others. By seeking a broad, faith-based exemption from anti-discrimination laws that protect religious liberty, among other categories, CSS and others would turn these laws on their head and, in the process, undermine religious freedom for all.

Republican National Committee v. Democratic National Committee (application for stay decided 4/6/20)

Issue: At issue was whether absentee ballots in a Wisconsin primary during COVID-19 must be mailed and postmarked by election day (April 7) or may be mailed and postmarked after election day, so long as they are received by the extended deadline set by the District Court (April 13) – although neither deadline initially carried a postmarked-by requirement.

Judgment/Holding: In a per curiam [decision](#), the Court held that the District Court fundamentally altered the nature of the election by extending the deadline and, by doing so in such proximity to the date of the election, contravened judicial precedent and erred in issuing the order. Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented in light of the safety concerns posed by the COVID-19 pandemic.

Merrill, Al Sec. Of State v. People First of Alabama (application for stay decided 7/2/20)

Issue: At issue was whether to stay an Alabama District Court's ruling granting a preliminary injunction that would allow some drive-up voting (though not requiring it) and lift absentee ballot witness requirements.

Judgment/Holding: In a brief [decision](#), the Court ruled 5-4 to grant the stay – in effect allowing for fewer alternatives to in-person voting in the Alabama Republican Senate primary. The ruling noted that Justices Ginsburg, Breyer, Sotomayor, and Kagan would have denied the stay.

Raysor v. DeSantis (application for stay denied 7/16/20)

Issue: At issue was whether the Supreme Court should vacate, pending appeal, the 11th Circuit's stay of a ruling by the U.S. District Court for the Northern District of Florida that struck down a Florida law requiring state residents who have been convicted of a felony to pay all court fees and costs before they are eligible to vote.

Judgment/Holding: In a one-line [opinion](#), the majority ruled 6-3 to deny a stay – in effect preventing thousands of state residents from participating in Florida's primary election because they cannot afford to pay their criminal court costs, fees, and fines. Justice Sotomayor wrote the dissent, starting with the point that "This Court's order prevents thousands of otherwise eligible voters from participating in Florida's primary election simply because they are poor."

In the Courts:

ADL'S LEGAL DOCKET 2019-20

August 2020

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DECISION KEY	
▲	Favorable to ADL
▼	Contrary to ADL
◻	Decision on other grounds
↓↑	Favorable and contrary portions of the decision

THE U.S. SUPREME COURT

Decided by the U.S. Supreme Court

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania/Trump v. Pennsylvania
(U.S. Supreme Court, 2020)

Reproductive
Rights
Establishment
Clause



At issue in this case is the legality of new federal rules providing excessively broad religious and moral exemptions from the Affordable Care Act's contraceptive mandate. The mandate requires employer health insurance policies to cover prescription contraception for women without cost sharing. These discriminatory rules harm women because they effectively allow any employer, including public corporations, to opt out of the mandate. The prior rules already exempted houses of worship, religiously affiliated organizations and small corporations. ADL joined a legal brief filed by religious and civil rights organizations asserting that the new exemptions are not authorized by the Religious Freedom Restoration Act and violate the Establishment Clause to the First Amendment.

St. James School v. Biel
(U.S. Supreme Court, 2020)

Church-State
Separation
Discrimination



At issue in this case is the application of the First Amendment's ministerial employee exception, first recognized by the Court in 2012, to two teachers at different religious, elementary schools. Grounded in constitutionally mandated separation of church and state, it exempts religious institutions from all employment discrimination laws for employees deemed to be ministerial. Lower courts ruled that the teachers could move forward with their respective age and disability discrimination lawsuits because the exception did not apply to them. ADL joined a brief on behalf of neither party asserting that given the sweeping breadth of the exception, it should only apply where the totality of circumstances, considering all facts bearing on the ministerial nature of an employee's job, clearly demonstrates that the employee is a minister of the faith. Based on this standard, the brief concludes that the exception applies to one teacher, but not the other.



Espinoza v. Montana Department of Revenue

(U.S. Supreme Court, 2019)

The Montana Constitution contains a provision that provides for stricter separation of church and state than the First Amendment. Based on it, the State's Supreme Court struck down a tuition-tax credit program that on paper supports secular and religious schools, but disproportionately benefited faith-based institutions. At issue before the U.S. Supreme Court is whether the Free Exercise Clause requires states to fund religious education when they support private secular schools. ADL joined a brief asserting that it does not. Longstanding U.S. Supreme Court precedent allows states to provide for stricter church-state separation than the First Amendment requires. Furthermore, the Court's 2017 decision concerning public funding for a religious school's playground resurfacing materials has no bearing on the case and actually reaffirmed this principle.

June Medical Services v. Gee

(U.S. Supreme Court, 2019)

This case challenges a law Louisiana passed in 2014 that imposed new requirements on abortion providers, including mandating that they have active admitting privileges at a local hospital. The impact of this law would be that only one abortion clinic would remain open in Louisiana, and there would not be any physician in the state providing abortions after 17 weeks. ADL joined with the National Women's Law Center and 71 other organizations on an amicus brief urging that the law — an unmistakable challenge to *Roe v. Wade* — be found unconstitutional. The brief highlights the actual burdens that the law imposes on reproductive rights and the resulting negative impact on equal participation in social and economic life. These burdens disproportionately fall on low-income women, women living in poverty, women of color, women who already have children, women subjected to intimate partner violence, and transgender and non-binary individuals. The right to liberty promised by the Constitution is denied when individuals' reproductive rights are curtailed. An identical Texas law was invalidated by the Supreme Court in 2016.



Department of Homeland Security v. Regents of the University of CA;

Donald J. Trump, President of the U.S. v. National Association for the Advancement of Colored People;

McAleenan, Acting Sec. of Homeland Security v. Vidal

(U.S. Supreme Court, 2019)

Immigration



At issue in the trio of DACA cases consolidated by the Court is the Administration's decision to rescind the Deferred Action for Childhood Arrivals (DACA) policy. The DACA policy was created by President Obama in 2012 and granted work authorization and relief from deportation — subject to eligibility and agency approval — to undocumented immigrants brought to the United States as children before 2007. DACA recipients would be able to renew their status every two years. The Administration's decision to rescind DACA unnecessarily disrupts the lives of the approximately 800,000 DACA recipients and their families. ADL joined an *amicus* brief filed by the Lawyers' Committee for Civil Rights Under Law and a coalition of civil rights organizations in support of the challenge to the Administration's decision. The brief argues that the Administration's decision is a violation of the Administrative Procedure Act (APA), a federal statute that protects against such arbitrary and capricious executive actions, where there are significant reliance interests. The brief describes the significant reliance interest engendered in the areas of education, housing and military service, and asks the court to affirm the decision of the lower courts and enjoin the rescission of DACA.

Comcast Corp. v. National Association of African American-Owned Media

(U.S. Supreme Court, 2019)

Discrimination
Civil Liberties



At issue in this case is whether under one of the oldest federal civil rights statutes — Section 1981 of the Civil Rights Act of 1866 — race discrimination victims must meet the burdensome “but-for” causation standard at the pleading stage instead of a more lenient “mixed motive” standard. ADL joined a coalition of civil rights organizations on an *amicus* brief arguing that the application of a “but-for” evidentiary standard would be inconsistent with the plain text, history and purpose of Section 1981. The brief discusses the continuing importance of Section 1981 - particularly for African Americans and other minorities - who continue to experience heightened discrimination.

Bostock v. Georgia / Altitude Express v. Zarda / R.G. & G.R. Harris Funeral Homes v. EEOC

(U.S. Supreme Court, 2019)

Discrimination



At issue in these cases is whether someone can legally be fired just because of their sexual orientation or gender identity. Title VII of the Civil Rights Act of 1964 prohibits discrimination “because of...sex” and federal and appellate courts have held that this prohibition extends to sexual orientation and gender identity. ADL joined a coalition of 59 civil rights organizations on an amicus brief arguing that it is important that the Court recognize that Title VII protects LGBTQ Americans to prevent backsliding on existing Title VII protections against racial discrimination and other forms of discrimination — protections that depend on the same legal rules that the LGBTQ employees rely on in these cases. Doing so is consistent with the statute's legislative intent, history, and statutory text. It argues that if the Court finds otherwise, it would destabilize Title VII and its ability to root out workplace discrimination in other forms.

Rucho v. Common Cause / Lamone v. Benisek

(U.S. Supreme Court, 2019)

Civil Liberties
Voting Rights



At issue in this case is partisan gerrymandering in both North Carolina and Maryland — i.e., the drawing of district lines to subordinate adherents of one political party and entrench the rival party in power. In each state, the political party in power (i.e., Republican leaders in North Carolina and Democratic leaders in Maryland) successfully created precise and durable maps that would ensure the entrenchment of that party for at least the next decade. ADL accordingly joined a brief urging the U.S. Supreme Court to set limits on partisan gerrymandering. Citing the foundational principles of our democracy, the brief argues that the partisan gerrymandering in North Carolina and Maryland contravenes fundamental, long-standing American democratic values.

THE FEDERAL AND STATE COURTS

Pending in the Federal and State Courts

[Antietam Batttelfield KOA v. Hogan](#) (U.S.C.A. 4th Circuit, 2020)

Free Exercise
Clause
Establishment
Clause

At issue in this case is a church invoking the Free Exercise and Establishment Clauses to seek a full exemption from a Maryland coronavirus stay-at-home order equally limiting religious and secular communal gatherings to 50% of facility capacity. In rejecting these claims, the legal brief joined by ADL asserts that the order is fully consistent with all Free Exercise Clause standards. Furthermore, the sought exemption is not a permissible religious accommodation. It would violate the Establishment Clause by jeopardizing the health of others, as well as preferring the church's religious beliefs (requiring in-person worship) over other faiths.

[Students for Fair Admissions, Inc. v. President and Fellows of Harvard](#) (U.S.C.A. 1st Circuit, 2020)

Discrimination

This case involves a legal challenge to Harvard College's race-conscious admissions policy, pursuant to which race is considered as one factor among many as part of a holistic evaluation of each individual applicant. Consistent with ADL's prior affirmative action jurisprudence, ADL filed a brief in support of Harvard on appeal, following a District Court ruling that found that Harvard's policies do not impose quotas, assign people to categories based on their race, or use race as a determinative factor in making admissions decisions. ADL's brief makes two points — first, that diversity in higher education is a compelling government interest, and second, that Harvard's current admissions practices (which are intended to promote rather than inhibit diversity) are clearly distinguishable from Harvard's admissions practices in the 1920s and 1930s, which were motivated by antisemitism, were explicitly designed to decrease Jewish enrollment, and which imposed a quota on Jews.

[303 Creative v. Elenis](#) (U.S.C.A. 10th Circuit, 2020)

LGBTQ
Rights
Establishment
Clause

At issue in this case is a business that seeks a religious exemption from a state anti-discrimination law for the purpose of denying wedding-related services to LGBTQ couples. It, however, does not currently sell such services and there is no allegation that the business violated the law. ADL joined a legal brief filed by

religious and civil rights organizations asserting that the business' lawsuit is premature. Even if it was not, the requested exemption is not required by the Free Exercise Clause and is prohibited by the Establishment Clause.

[Oracle America, Inc. v. U.S. Dept. of Labor](#)

(U.S. District Court for the District of Columbia, 2020)

At issue before the United States District Court for the District of Columbia is whether the U.S. Department of Labor (DOL) and its Office of Federal Contract Compliance Programs (OFCCP) should be able to implement and enforce the government's longstanding policy against discrimination in government contracting. ADL signed onto an amicus brief that supports the dismissal of a lawsuit brought by Oracle against the DOL and OFCCP — just as trial was getting underway in OFCCP's \$400 million gender and race discrimination lawsuit against the company. Oracle argues that OFCCP lacks legal authority to enforce civil rights laws. If Oracle prevails, the OFCCP would no longer be able to enforce the Executive Order that prohibits discrimination in the federal contractor workforce, which makes up approximately one quarter of the U.S. civilian workforce. ADL joined a coalition of former government officials and employees, civil and workers' rights advocacy groups, labor unions, and law firms arguing that the OFCCP must maintain its ability to bring forward enforcement actions, in order to protect civil rights and advance equal opportunity for all workers — including women, people of color, people with disabilities, and LGBTQ+ individuals.

[DeOtte v. State of Nevada](#)

(U.S.C.A. 5th Circuit, 2019)

At issue before the Fifth Circuit is a lower court order invoking the federal Religious Freedom Restoration Act (RFRA) to block enforcement of the Affordable Care Act's contraception mandate as applied to two broad groups of people who have religious objections to the mandate based on the government, insurance companies and other individuals providing or procuring contraception under the law. ADL joined a brief opposing the order. It asserts that religious exemptions such as the order which harm third parties violate the Establishment Clause to the First Amendment. Furthermore, while the mandate may be religiously offensive to the two groups, it does not violate RFRA because they are objecting to the actions of others as opposed to conduct required of them by the mandate.

[Discrimination](#)

[Church-State
Separation
Discrimination](#)

[Patrick Saget v. Donald J. Trump](#)
(Eastern District of New York, 2019)

This case involves a challenge to the Trump administration's termination of temporary protected status (TPS) for approximately 50,000 Haitians and their 27,000 U.S. citizen children. TPS is a form of humanitarian immigration relief that allows individuals from designated countries to live and work legally in the U.S. if they cannot return safely to their country of origin due to armed conflict, natural disaster or other extraordinary circumstances. Most TPS recipients came to the U.S. at a young age, lived here most of their lives, and have strong ties to this country. This suit alleges violations of the law and the Constitution by Trump administration officials seeking to operationalize the President's racial animus towards Haitians. ADL filed an amicus brief in this case in support of the preliminary injunction blocking the Trump administration decision to terminate TPS for Haiti issued by Second Circuit Judge William F. Kuntz. ADL's brief explains that while there is no constitutional protection requiring the U.S. to afford temporary protected status, there is a clear Constitutional prohibition on discrimination in the implementation of government policies based on race, national origin, and other protected characteristics, and that ample evidence of racial animus by the Administration exists in this case. The brief catalogues numerous problematic statements by President Trump and highlights the pernicious history of the "America First" slogan and other seemingly innocuous government messages and strategies. As an organization with vast experience responding to all forms of discrimination and hate, ADL recognizes the anti-immigrant nature of the TPS terminations and the need for context and analysis to be provided to the court. ADL also filed a brief in *Ramos v Nielsen*, a Ninth Circuit case regarding the Administration's termination of TPS for individuals from El Salvador, Haiti, Nicaragua, and Sudan.

[Yanes, et. al. v. O C Food & Beverage, LLC](#)
(Fifth District Court of Appeals Florida, 2019)

This case involves a challenge to the Orange County, Florida anti-discrimination ordinance that prohibits employment, housing and public accommodation discrimination. Unlike the State's anti-discrimination law, it covers the categories of sexual orientation and gender identity. A trial court struck down the ordinance on the grounds that the State law is the only legal remedy for discrimination in Florida. ADL joined a brief filed on behalf of a diverse group of civil rights organizations rejecting this ruling. It asserts that the Florida Constitution and longstanding State Supreme Court precedent empower local government to adopt laws promoting health, safety and welfare of residents, including comprehensive anti-discrimination protections. Furthermore, such local laws are

critical to eradicating discrimination in Florida and advancing the social and economic well-being of LGBTQ people.

[Carson v. Makin](#)

(U.S.C.A. 1st Circuit, 2019)

Church-State
Separation

The State of Maine does not operate public secondary schools in certain parts of the State and reimburses parents for the cost of tuition at private schools. The program is limited to secular institutions because Maine's Constitution provides for stricter separation of church and state than the First Amendment. Parents seeking tuition reimbursement from the State for private religious schools that indoctrinate faith, proselytize and discriminate claim that the Free Exercise clause requires this funding. ADL joined a brief asserting that there is no such requirement because longstanding U.S. Supreme Court precedent allows states to provide for stricter church-state separation than the First Amendment. Furthermore, the Court's 2017 decision concerning public funding for a religious school's playground resurfacing materials has no bearing on the case and reaffirmed this principle under which the First Circuit previously upheld the program in 2004.

[New Hope Family Services, Inc. v. Poole](#)

(U.S.C.A. 2nd Circuit, 2019)

Church-State
Separation
Discrimination

New York State bars all state licensed adoption agencies from discriminating against prospective adoptive parents because of sexual orientation and gender identity, among other characteristics. At issue in this case is a free exercise challenge by a religious child placement agency that did not want to place children with same-sex couples. ADL joined an *amicus* brief in support of New York State filed by a diverse group of civil rights organizations. It asserts that as matter of law the Free Exercise Clause is not violated where there is a mere conflict between a faith-based entity's religious beliefs and civil or criminal law. Furthermore, the finding of a violation in this instance would open the door to discrimination in adoption on the basis of religion and other covered categories.

[La Clínica de la Raza v. Trump](#) (Northern District of California, 2019);

[State of California v. Dept. of Homeland Security](#) (Northern District of California, 2019);

[State of New York v. Dept. of Homeland Security](#) (Southern District of New York, 2019);

[Make the Road New York v. Cuccinelli](#) (Southern District of New York, 2019)

At issue in these cases are the Department of Homeland Security's Regulation (the "Regulation") which significantly expands the meaning and application of the term "public charge." A person determined by the government to be a "public charge" may be denied admission into the U.S. or denied lawful permanent resident status. While the term "public charge" has always meant someone who is primarily dependent on the government, the Regulation adds to the number of public assistance programs that may be considered in making this determination and now includes supplemental health care, nutrition and housing assistance and is expected to result in the exclusion of a vast number of immigrants. Several lawsuits challenging the Regulation have been filed around the country and ADL signed onto amici briefs in cases before district courts in California, New York and Washington. The briefs discuss the historical background of the "public charge" rule and contend that the Regulation disproportionately impacts specific immigrant populations such as immigrant communities of color and is motivated at least in part by racial animus.

Halprin v. Davis

(Northern District of Texas, 2019)

This case involves an appeal for a new trial for Petitioner Randy Halprin, one of six individuals convicted of capital murder and sentenced to death for the murder of Irving, Texas police officer Aubrey Hawkins. The appeal notes that former state District Judge Vickers Cunningham was deeply prejudiced against Mr. Halprin because he is Jewish. ADL filed an amicus brief in support of Mr. Halprin's Petition for Writ of Habeas Corpus in the United States District Court Northern District of Texas, Dallas Division. ADL's amicus brief provides historical context for the blatantly anti-Semitic terms and phrases attributed to the presiding judge in Mr. Halprin's criminal and capital trial. Judge Cunningham routinely used derogatory and offensive language about Jewish people, Catholics, African Americans and Latinx people. The brief points to the substantial harm caused by racial and religious bias to our justice system.

Drew Adams v. The School Board of St. Johns County, FL
(U.S.C.A. 11th Circuit, 2019)

This case involves the Equal Protection Clause and Title IX challenges to a county school board policy that prohibits transgender students from using the restroom which conforms to their gender identity. ADL joined a brief filed by the National Women's Law Center opposing this policy. The brief focuses on the claim under Title IX, a federal law which prohibits discrimination on the basis of sex at publicly funded educational institutions. The brief asserts that the law's protections encompass gender identity, and thus policies or rules governing schools may not turn on one's sex as assigned at birth. Furthermore, the

protective concerns raised by the school board in support of the policy are invalid because they are based on discriminatory stereotypes, which have been rejected by the U.S. Supreme Court in other contexts.

Ramos v. Nielsen

(U.S.C.A. 9th Circuit, 2019)

Immigration
Discrimination

At issue in this case is the Administration's termination of temporary protected status (TPS) for individuals from El Salvador, Haiti, Nicaragua and Sudan. Nine TPS holders and five U.S. Citizen children of TPS holders sued the Department of Homeland Security to stop the Administration from implementing the terminations. The district court issued a preliminary injunction, ordering the government to continue TPS and work authorization for TPS holders from the four countries while the lawsuit continues. At the 9th Circuit Court of Appeals, ADL filed an amicus brief in support of the lower court's decision. ADL's brief explains that there is a clear constitutional prohibition on discrimination in the implementation of government policies based on race, national origin and other protected characteristics, and that ample evidence of racial animus by the Administration exists in this case.

New York v. Trump

(U.S.C.A. 2nd Circuit, 2018)

Civil Liberties
Immigration

At issue in this case is President Trump's decision to rescind Deferred Action for Childhood Arrivals (DACA), a program created by President Obama in 2012 that granted work authorization and relief from deportation for a two-year period for certain undocumented immigrants brought to the United States as children. The decision unnecessarily put the lives of the nearly 800,000 DACA recipients and their families in limbo. ADL joined an amicus brief in support of the challenge to this decision by 16 Attorneys General. The brief urges the Court to issue a preliminary injunction to prevent irreparable harm to DACA recipients, their families, communities, and to our country's educational institutions, businesses, economy, and military. The brief highlights the positive contributions DACA recipients have made to our communities and society and the destabilizing impact that will result to immigrants, the economy, and our country without relief. The brief was filed by the Lawyers' Committee for Civil Rights under Law and a coalition of civil rights organizations.

Decided by the Federal and State Courts

Free Exercise
Clause
Establishment
Clause



Spell v. Edwards

(U.S.C.A. 5th Circuit, 2020)

At issue in this case is a church invoking the Free Exercise and Establishment Clauses to seek a full exemption from a Louisiana coronavirus stay-at-home order equally limiting religious and secular communal gatherings to 50% of facility capacity. In rejecting these claims, the legal brief joined by ADL asserts that the order is fully consistent with all Free Exercise standards. Furthermore, the sought exemption is not a permissible religious accommodation. It would violate the Establishment Clause by preferring the church over other houses of worship and jeopardizing the health of others.

Discrimination
LGBTQ
Rights



U.S. v. Varner

(U.S.C.A. 5th Circuit, 2020)

This case involves a transgender criminal defendant who made a written request that the Fifth Circuit refer to her by her preferred name (Katherine Nicole Jett) and pronouns while her appeal is pending. The Fifth Circuit issued a ruling denying Ms. Jett's request and insisting that the court will continue to refer to her by her given name and by using male pronouns. ADL joined a coalition amicus brief that takes no position on the merits of the underlying criminal case but urges the Court to repeal and replace the majority opinion with a decision stripped of the portion that unnecessarily denies transgender litigants equal dignity and access to justice.

Immigration
Federalism



New York v. U.S. Immigration and Customs Enforcement

(Southern District of New York, 2019)

This case involves a challenge by the New York Attorney General to a federal government policy authorizing civil immigration arrests in and around New York State courthouses — a policy that disrupts the effective functioning of our courts, deters victims and witnesses from assisting law enforcement and vindicating their rights, hinders criminal prosecution, and undermines public safety. ADL joined an *amicus* brief, prepared by the Immigrant Defense Project (IDP) and joined by 39 other coalition partners, in support of the New York Attorney General's opposition to a motion to dismiss. Drawing heavily from a report that ADL assisted in drafting entitled, "Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State," the brief describes how ICE's aggressive enforcement actions in and around New York state courts impair the effective and impartial administration of justice.



HIAS v. Trump

(U.S. District Court, District of Maryland, 2019)

This case involves a challenge to an Executive Order (EO) that requires state and local officials to consent in writing to refugees being resettled within that state and locality before the refugees can live there. Agencies that work with refugees to help them resettle within the United States sued to stop the EO from going into effect. ADL joined an interfaith *amicus* brief prepared by the Jewish Council for Public Affairs and joined by 27 other coalition partners in support of the refugee resettlement agencies. The brief provides an interfaith perspective on the importance of helping refugees; the experience certain faiths, including Judaism, have had as refugees themselves; and the negative impact of the EO on the refugee resettlement and advocacy work of *amici*.



Mayor and City Council of Baltimore v. Alex M. Azar II (District of Maryland, 2019);

City and County of San Francisco v. Alex M. Azar II (Northern District of California, 2019)

At issue in these cases is a U.S. Department of Health and Human Services Rule that creates an overly broad and preferential religious exemption for healthcare employees, contractors and volunteers. The Rule effectively provides these individuals who have religious objections to certain medical procedures, including abortion or sterilization, with the right to hinder or even block a hospital from performing such procedures. ADL's briefs filed on behalf of religious and civil rights organizations assert that the Rule violates the First Amendment's Establishment Clause because it harms patients and other third parties, and it prefers particular religious beliefs over others.



North Carolina v. Bennett; North Carolina v. Hobbs

(North Carolina Supreme Court, 2019)

In North Carolina, the state appellate courts have never, in the thirty years since *Batson v. Kentucky*, 476 U.S. 79 (1986) (the seminal U.S. Supreme Court decision establishing the legal framework for claims of race discrimination in the exercise of peremptory strikes), found a single instance of discrimination against a juror of color, including in the two cases on appeal in this matter. ADL joined an *amicus* brief alongside a coalition of state and national criminal justice and civil rights advocates to ask the North Carolina Supreme Court to, at minimum, bring its jurisprudence into alignment with that of the U.S. Supreme Court and overrule prior state case law that fails to adhere to federal standards. *Amici* have also asked the Court to consider additional safeguards, whether pursuant to Article I, section 26 of the North Carolina Constitution, or pursuant to its

commission or rulemaking authority, in order to help protect against racial bias in jury selection moving forward.

[Parents for Privacy v. Dallas School District No. 2](#)
(U.S.C.A. 9th Circuit, 2019)

Discrimination
LGBTQ
Rights



At issue in this case is a school district's policy allowing transgender students to use restrooms and changing facilities consistent with their gender identities. As a leading anti-bias education provider, ADL filed an amicus brief supporting the school's policy. ADL's brief was joined by LGBTQ advocacy organizations, civil society groups, youth advocates, and religiously affiliated organizations. The brief argues that inclusive policies like those of Dallas are in the best interest of LGBTQ students, and that these policies promote a cohesive and respectful school environment to the benefit of all students.

[Moussouris v. Microsoft](#)
(U.S.C.A. 9th Circuit, 2019)

Civil Liberties
Sex
Discrimination



At issue in this case is whether the analysis and assessment by the Federal District Court in Washington State denying class certification to a proposed class of female engineers alleging systemic and pervasive discrimination was erroneous and created an arbitrary threshold for anecdotal evidence not required by law. ADL and 29 other civil rights and women's rights groups joined a brief prepared by Impact Fund which argued that the lower court made a critical mistake in failing to consider the individual statements of women in the proposed class, while highlighting clear cases of harassment and discrimination, and underscoring the potentially devastating precedent the lower court's decision establishes for all potential victims of discrimination. Class certification is an essential mechanism not only for women facing gender bias and discrimination, but for all victims of discrimination.

[California v. U.S. Department of Health and Human Services](#)
(U.S.C.A. 9th Circuit, 2019)

Church-State
Separation
Discrimination



At stake in this case are the administration's final rules on religious and moral objections to the Affordable Care Act's (ACA's) contraceptive mandate. The federal court issued a nationwide injunction blocking the new rules, which would effectively repeal the contraceptive mandate and broadly allow employers and universities to invoke religion or morality to block their employees' and students' contraceptive coverage that is otherwise guaranteed by the ACA. On appeal, ADL joined ACLU and other national civil rights organization on an amicus brief, which recounts how the use of religion in America to justify racial and sex discrimination has abated as societal views and norms evolved. The brief argues

that religion in the form of the excessively broad exemption in this case should not be used as a vehicle to further sex discrimination in our society.

[City and County of San Francisco v. Barr; State of California v. Barr](#)
(U.S.C.A. 9th Circuit, 2019)

Civil Liberties
Immigration



This case involves challenges to immigration enforcement-related conditions imposed by the Justice Department in FY17 on the receipt of federal public safety grants by California and San Francisco under the Edward Byrne Memorial Justice Assistance Grant (“JAG”) program and by California under the Community Oriented Policing Services (“COPS”) program and COPS Anti-Meth Program (“CAMP”). ADL filed a brief supporting California at the district court level, in which the Court blocked implementation of DOJ’s conditions. The federal government appealed the decision. ADL’s brief at the 9th Circuit Court of Appeals draws on our experience as leading trainers of law enforcement on issues of hate crimes, community policing, and extremism. ADL’s brief argues that DOJ’s conditions would undermine critical trust between police officers and immigrant communities, making immigrants more reluctant to report crimes- including hate crimes- and compromising public safety for all.

[Commonwealth of Pennsylvania and State of New Jersey v. President, United States of America and Little Sisters of the Poor](#)
(U.S.C.A. 3rd Circuit, 2019)

Church-State
Separation
Discrimination



At stake in this case are the administration’s final rules on religious and moral objections to the Affordable Care Act’s (ACA’s) contraceptive mandate. The federal court issued a nationwide injunction blocking the new rules, which would effectively repeal the contraceptive mandate and broadly allow employers and universities to invoke religion or morality to block their employees’ and students’ contraceptive coverage that is otherwise guaranteed by the ACA. On appeal, ADL joined ACLU and other national civil rights organizations on an amicus brief, which recounts how the use of religion in America to justify racial and sex discrimination has abated as societal views and norms evolved. The brief argues that religion in the form of the excessively broad exemption in this case should not be used as a vehicle to further sex discrimination in our society.

[Shurtleff v. City of Boston](#)
(U.S.C.A. 1st Circuit, 2019)

At issue in this case is the constitutionality of a decision by the City of Boston to reject a request by some residents to raise the Christian flag in front of City Hall, next to the American flag and the Massachusetts state flag. ADL joined



an amicus brief filed by a diverse group of religious and civil rights organizations urging the First Circuit to affirm the District Court's ruling in favor of the City. In addition to explaining why the raising of the Christian flag outside of City Hall would violate the Establishment Clause, the brief provides an in-depth discussion on how and why the drafters of the First Amendment effected a separation of government and religion as the means to ensure enduring religious freedom which—in light of our nation becoming increasingly pluralistic—is more crucial than ever.

Fields v. Speaker of the Pennsylvania House of Representatives
(U.S.C.A. 3rd Circuit, 2019)



At issue in this case is the constitutionality of a Pennsylvania House of Representatives policy barring nontheists from serving as guest chaplains to offer the Chamber's daily invocation. ADL's brief asserts that the policy is unconstitutional for two reasons. First, it violates longstanding Establishment Clause precedent prohibiting government from preferring one religion over others. Second, the House's justification that historically nontheists have not given invocations before Congress or the House Chamber is flawed because this absence does not constitute evidence of intentional exclusion from the legislative prayer opportunity.