



IN THE COURTS:

ADL'S CURRENT LEGAL DOCKET

JUNE 2014

CIVIL RIGHTS DIVISION ■ LEGAL AFFAIRS DEPARTMENT

Table of Contents

THE U.S. SUPREME COURT.....	3
2013-2014 DECISIONS FROM THE U.S. SUPREME COURT	3
FILED AND AWAITING DECISION IN THE U.S. SUPREME COURT	4
THE APPELLATE AND STATE COURTS ...	5
2013-2014 DECISIONS FROM APPELLATE AND STATE COURTS.....	5
FILED AND AWAITING DECISION	8
IN APPELLATE AND STATE COURTS.....	8
INDEX OF CASES FILED/DECIDED IN	
2013-2014	12

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

THE U.S. SUPREME COURT

2013-2014 DECISIONS FROM THE U.S. SUPREME COURT

Civil Liberties Reproductive Rights



[Burwell, et al. v. Hobby Lobby Stores, Inc. et al.](#) (U.S. Supreme Court, 2014)

At issue in this case is a challenge by owners of for-profit, secular corporations to the federal Affordable Care Act's contraception mandate. The mandate requires the corporations to provide employees with comprehensive health insurance, including birth control coverage, or to pay a modest tax, which is generally lower than the aggregate cost of employee health insurance. The owners and corporations claim that the contraception mandate violates the federal Religious Freedom Restoration Act ("RFRA") by "substantially burdening" their religious exercise. ADL's amicus brief argues that for multiple reasons, including the corporations having the option of not providing comprehensive health insurance, any burden on religious exercise posed by the mandate is incidental and therefore it does not violate RFRA.

Civil Liberties Reproductive Rights



[McCullen v. Coakley](#) (U.S. Supreme Court, 2013)

In this case, the Supreme Court will be considering the constitutionality of a Massachusetts law creating a buffer zone around reproductive health clinics. ADL's brief urges the Supreme Court to recognize that other legislatures and courts have relied on the Supreme Court's previous rulings to adopt and approve a substantial body of law regarding buffer zones. If the Supreme Court decides that the Massachusetts buffer zone law is invalid, then the Court must also be willing to accept that protesters may crowd the doors of synagogues, churches, and mosques, chanting slogans at worshippers as they enter, and that picketers may mingle with the mourners at military funerals, confronting grieving parents with placards proclaiming, "Thank God for Dead Soldiers."

Church-State Separation Establishment Clause



[Town of Greece v. Galloway](#) (U.S. Supreme Court, 2013)

This case addresses whether the constitutionally-mandated separation of church and state was violated when a town council in upstate New York began each of its meetings with a sectarian prayer led by a member of the clergy or local citizen. This is the first time in 30 years that the Supreme Court will consider a case addressing the issue of legislative prayer. ADL, a longstanding advocate for church-state separation, joined with the American Civil Liberties Union, the New York Civil Liberties Union and Interfaith Alliance Foundation in a coalition brief in this case.

Discrimination Affirmative Action



[Schuette v. Coalition to Defend Affirmative Action](#) (U.S. Supreme Court, 2013)

This case involved a ballot initiative in Michigan that barred state colleges and universities from "discriminat[ing] against, or granting[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin." Lower courts interpreted this constitutional amendment to bar the use of any and all affirmative action programs. ADL filed a brief arguing that there is a difference between affirmative action programs that consider race as one of many factors in a holistic review of applicants and programs, like quotas, that impermissibly grant preferential treatment

based on race. The brief urged the Supreme Court to return the case to the lower courts to decide whether the amendment bars all affirmative action programs or only those that confer preferential treatment based on race. The Supreme Court overturned the 6th Circuit's decision, upholding the Michigan ballot initiative.

Discrimination
Housing

[Mount Holly Township v. Mount Holly Gardens Citizens in Action Inc.](#) (U.S. Supreme Court, 2013)

SETTLED

In this case, the U.S. Supreme Court will review a key provision of the Fair Housing Act. Enacted in the wake of Rev. Martin Luther King Jr.'s tragic assassination in 1968, the Fair Housing Act is our nation's key tool to eradicate housing discrimination and promote more inclusive neighborhoods. The Mount Holly case raises the question whether the Fair Housing Act prohibits not just intentional bigotry but also unjustified practices that disproportionately exclude or harm people based on race, ethnicity, religion, family status, or other characteristics covered by the Act. This principle, known as the "disparate impact" standard, has been the law of the land for over four decades. In fact, the U.S. Department of Housing and Urban Development (HUD) issued regulations earlier this year that again confirm this approach. ADL joined an amicus brief filed on behalf of a coalition of organizations arguing that the Act's disparate impact component remains necessary to protect crucial antidiscrimination and desegregative interests that Congress targeted in passing and amending the Act and that the disparate impact standard is essential to realizing those benefits by addressing the myriad and evolving barriers to fair housing that continue to exist in the 21st century.

FILED AND AWAITING DECISION IN THE U.S. SUPREME COURT

Religious Freedom
RLUIPA

[Holt v. Hobbs](#) (U.S. Supreme Court, 2014)

This case challenges an Arkansas prison's decision to deny an observant Muslim the right to observe his faith by wearing a short beard. The Religious Land Use and Institutionalized Persons Act (RLUIPA) requires the State to offer a compelling reason for denying a prisoner's request to accommodate a sincerely-held religious belief, but courts around the country have applied the standard differently. ADL joined a coalition of religious organizations urging the Supreme Court to "apply uniform, rigorous standards before accepting that prison officials have properly denied a prisoner of sincere belief the religious accommodation he or she seeks."

THE APPELLATE AND STATE COURTS

2013-2014 DECISIONS FROM APPELLATE AND STATE COURTS

Discrimination
Marriage equality



[Kitchen v. Herbert](#) (U.S.C.A. 10th Circuit, 2014)

This case challenges Utah's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 26 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination
Ministerial
Exception



[Kant v. Lexington Theological Seminary](#) (Supreme Court of Kentucky, 2013)

At issue in this case is whether the "ecclesiastical matter" bar or the ministerial exception defense would act to bar a Jewish professor's breach-of-contract claim against the Christian theological seminary at which he had tenure for terminating his employment because of a financial emergency. ADL argued that neither the "ecclesiastical matter" bar nor the ministerial exception defense would bar a breach-of-contract claim. Religious organizations, like their secular counterparts, are always free to bargain with their employees for certain contractual protections and thus avail themselves to the neutral principles of contract law. But, having done so, they are not free to demand from government a special exemption from the legal consequences of those bargains.

Church-State
Separation
Establishment
Clause



[Bronx Household v. Board of Education of the City of New York](#) (U.S.C.A. 2d Circuit, 2012)

This case addresses the issues of whether a church can regularly hold worship services in a public school house, in violation of the Establishment Clause of the Constitution or whether excluding the church from holding worship services violates the church's First Amendment rights. ADL has long advocated for a strict separation of Church and State. ADL's brief, submitted to the Second Circuit Court of Appeals, argues that, in this situation, where the church has continuously used a public school every Sunday for more than ten years, its use would be understood as an endorsement by the school of the church and its mission. Such an endorsement would clearly violate the Establishment Clause of the Constitution.

Discrimination
Marriage equality



[Griego v. Toulouse](#) (New Mexico Supreme Court, 2013)

This case is about allowing loving, committed same-sex couples in New Mexico to receive a marriage license and the State respecting those marriages on equal footing as all others. The question at issue in this case concerns whether or not the New Mexico constitution allows same-sex couples to marry. ADL, a longtime supporter of marriage equality, joined a group of civil rights organizations on a coalition brief in support of the freedom to marry.



[Freshwater v. Mount Vernon Board of Education](#) (Ohio Supreme Court, 2012)

This case concerns the Board of Education's decision to terminate Freshwater's employment after he failed to adhere to the established curriculum for eighth grade science and instead included teaching creationism and intelligent design in his eighth grade science classes. ADL signed on to a brief with other civil-rights and religious-liberty organizations. The *amicus* brief argued that the school district not only had a Constitutional obligation to stop Freshwater's repeated violations of the Establishment Clause, subverting the established curriculum is not protected by the First Amendment. The Ohio Supreme Court upheld the termination on insubordination grounds. While the court explicitly declined to address constitutional issues, ADL was deeply troubled by its determination that the presence of Freshwater's bible on his desk in the classroom did not violate the Establishment Clause of the First Amendment. The court failed to recognize that the display of a bible in a public-school science classroom – including on the teacher's desk – sends the impermissible message that the school favors religion.



[Autocam Corporation v Sebelius](#) (U.S.C.A. 6th, Circuit, 2013)

[Eden Foods v. Sebelius](#) (U.S.C.A. 6th Circuit, 2013)

[Conestoga Wood Specialties Corp. v. Sebelius](#) (U.S.C.A. 3d Circuit, 2013)

[Liberty University v. Lew](#) (U.S.C.A. 4th Circuit, 2013)

In 2010 Congress passed the Patient Protection and Affordable Care Act (ACA). The ACA's contraception mandate requires that health insurance provided by employers covered by the ACA must afford the full range of reproductive services, including birth control coverage, to female employees. Several private, non-religious corporations have filed suits alleging that the contraception mandate violated their right to free exercise of religion. ADL has submitted briefs in each case urging the court to uphold the ACA's contraception mandate. The briefs argued that the mandate does not place a substantial burden on the employer's free exercise because the connection between the contraception rule and any impact on the employer's religious exercise is too attenuated. They further argued that an employee's independent decision to use contraception severs the causal chain between government action and any potential impact on the employer's religious exercise. Finally, the briefs maintained that employers do not have the right to impose their religious beliefs on their employees. The courts held, in essence, that for-profit corporations could not raise religious exercise challenges to the contraception rule. The courts also rejected the claims of the owners.



[Hobby Lobby Stores v. Sebelius](#) (U.S.C.A. 10th, Circuit, 2013)

[Newland v. Sebelius](#) (U.S.C.A. 10th Circuit, 2013)

[Annex Medical v. Sebelius](#) (U.S.C.A. 8th Circuit, 2013)

[O'Brien v. HHS](#) (U.S.C.A. 8th Circuit, 2012)

[Korte v. Sebelius](#) (U.S.C.A. 7th Circuit, 2013)

[Gibaldi v. HHS](#) (U.S.C.A. DC Circuit, 2013)

These are other Affordable Care (ACA) cases filed concerning the ACA's contraception mandate requirement that health insurance provided by employers covered by the ACA must afford the full range of reproductive services, including birth control coverage, to female employees. ADL again submitted a brief urging the court to uphold the ACA's

contraception mandate. The briefs argue that the mandate does not place a substantial burden on the employer's free exercise because the connection between the contraception rule and any impact on the employer's religious exercise is too attenuated. They further argue that an employee's independent decision to use contraception severs the causal chain between government action and any potential impact on the employer's religious exercise. Finally, the briefs maintain that employers do not have the right to impose their religious beliefs on their employees. The courts blocked enforcement of the mandate, holding that the corporations could assert their religion claims, that the corporations were likely to succeed in showing their religious exercise was substantially burdened, and that the rule was not narrowly tailored to further a compelling interest.

FILED AND AWAITING DECISION IN APPELLATE AND STATE COURTS

Discrimination
Marriage equality

[Tanco v. Haslam](#) (U.S.C.A. 6th Circuit, 2014)

This case challenges Tennessee's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 22 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination
Marriage equality

[Bourke v. Beshear](#) (U.S.C.A. 6th Circuit, 2014)

This case challenges Kentucky's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 22 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination
Marriage equality

[DeBoer v. Snyder](#) (U.S.C.A. 6th Circuit, 2014)

This case challenges Michigan's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 22 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Church-State
Separation
Government
funding

[LaRue v. Colorado Board of Education](#) (Colorado Supreme Court, 2014)

Larue v. Douglas County School Board challenges Colorado's school voucher program that allows state funding to flow to parochial schools. While the Supreme Court has interpreted the U.S. Constitution to permit similar programs in other states, the Colorado's constitution contains a No-Aid Clause that more explicitly prohibits direct and indirect state funding of religion. The ADL and a coalition of religious groups from multiple faiths argue that Colorado's No-Aid Clause and the U.S. Constitution's Religion Clauses are not synonymous, and that the former reflects Colorado's considered judgment that government funding of religion threatens religious liberty. Accordingly, the brief urges the Colorado Supreme Court to find that the voucher program violates the state constitution.

Discrimination
Marriage equality

[Bostic v. Schaefer](#) (U.S.C.A. 4th Circuit, 2014)

This case challenges Virginia's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 20 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which

marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination
Marriage equality

[Bishop v. Smith](#) (U.S.C.A. 10th Circuit, 2014)

This case challenges Oklahoma's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 26 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Hate Crimes
Religious
Freedom

[United States v. Miller](#) (U.S.C.A. 6th Circuit, 2014)

The Defendants in this case are challenging the constitutionality of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). The Anti-Defamation League filed an amicus brief on behalf of 40 nationally-prominent civil rights, human rights, religious, educational and law enforcement organizations urging the U.S. Court of Appeals for the Sixth Circuit to uphold the constitutionality of the Hate Crimes Prevention Act and to affirm that it applies to cases in which the religiously-motivated violence involves victims and perpetrators who share the same faith. The brief is the first coalition brief filed in any challenge to the constitutionality of the HCPA.

Religious Freedom
Discrimination

[Al Falah Center v. Township of Bridgewater](#) (U.S.C.A. 3d Circuit, 2014) At issue in this case is a claim by a Muslim congregation in Bridgewater, NJ that the municipality adopted a land use ordinance to block conversion of a former banquet facility, purchased by the Congregation, into a mosque. The Interfaith Coalition on Mosques (ICOM)'s amicus brief contends that the township's conduct violates the Religious Land Use and Institutionalized Persons Act (RLUIPA), which safeguards the religious freedom of houses of worship and other institutions in the land-use context by requiring courts to apply a strict standard for reviewing laws that substantially burden religious exercise. ICOM was formed by the Anti-Defamation League in 2010 to assist Muslim communities confronting opposition to the legal building, expansion or relocation of their mosques.

Church-State
Separation/
Discrimination
Establishment
Clause

[Duncan v. New Hampshire](#) (New Hampshire Supreme Court, 2014)

At issue in this case is the New Hampshire Education Tax Credit Program, which authorizes New Hampshire businesses to redirect up to 85% of taxes owed as donations to K-12 "scholarship organizations," which pay for tuition at private religious and secular schools. In addition to undermining separation of church and state, the Program directs public funds to private religious and secular schools that discriminate against students and teachers. ADL's brief focuses on this discrimination issue arguing that the Program violates the New Hampshire constitution because its minimal anti-discrimination prohibitions allow public financing of private schools that discriminate against students and teachers on the basis of religion, sex, sexual orientation, gender identity, disability and other personal characteristics.

<div>Discrimination</div> <div>Education</div>	<p><u>Arce v. Huppenthal</u> (U.S.C.A. 9th Circuit, 2013)</p> <p>At issue in this case is Arizona law HB 2281, which bars public schools from 1) promoting the overthrow of the government; 2) promoting resentment towards a race or class of people; 3) designing programs primarily for students of a particular ethnic group; and 4) advocating ethnic solidarity instead of the treatment of pupils as individuals. The legislative history of the bill makes clear that its intent was to dismantle the Tucson Unified School District's Mexican-American Studies program (MAS), despite the program's success in closing the educational achievement gap for Latino students. After passage of the law, the State Superintendent ordered the school district to dismantle the MAS program. MAS staff and students filed suit. ADL joined a brief written by the Chief Earl Warren Institute for Law and Social Policy, which argues that the lower court erred in failing to consider fully how the law violates equal protection guarantees.</p>
<div>Discrimination</div> <div>Marriage equality</div>	<p><u>Sevcik v. Sandoval and Jackson v. Abercrombie</u> (U.S.C.A. 9th Circuit, 2013)</p> <p>The Nevada case, <i>Sevcik v. Sandoval</i>, was brought by four same-sex couples who sought marriage licenses in Nevada and four more couples who had been married in California and Canada and sought recognition of those marriages in Nevada. The Hawaii case, <i>Jackson v. Abercrombie</i>, contested the constitutionality of both the state's ban on same-sex marriage and its recognition of civil unions only. The two cases have been combined into a single appeal. ADL filed a brief on behalf of a coalition of 29 organizations arguing that overturning the marriage bans not only would ensure that religious considerations do not improperly influence what marriages the two states can recognize but also would allow religious groups to decide the definition of marriage for themselves.</p>
<div>Hate Crimes</div> <div>Jury Instructions</div>	<p><u>People v. DeLee</u> (New York Court of Appeals, 2013)</p> <p>In a 2009 trial, DeLee was convicted of first-degree manslaughter as a hate crime, under New York State's hate crime law, a law patterned after ADL's Model Law. The jury also found DeLee not guilty on a second count, which was described to the jury as including manslaughter "but not as a hate crime." DeLee's attorneys appealed the verdict, arguing that the two verdicts contradicted each other and that therefore the conviction should be reversed. The Appellate Division agreed and on a 4-1 decision in July reversed the conviction, and DeLee was immediately released from prison. ADL joined a distinguished group of organizations urging the Court to reinstate the conviction so that justice may be served.</p>
<div>Civil Liberties</div> <div>Reproductive Rights</div>	<p><u>Legatus v. Sebelius</u> (U.S.C.A. 6th Circuit, 2013)</p> <p>In 2010 Congress passed the Patient Protection and Affordable Care Act (ACA). The ACA's contraception mandate requires that health insurance provided by employers covered by the ACA must afford the full range of reproductive services, including birth control coverage, to female employees. A private, non-religious corporation filed suit alleging that the contraception mandate violated its right to free exercise of religion. ADL submitted a brief urging the court to uphold the ACA's contraception mandate. The brief argued that the mandate does not place a substantial burden on the employer's free exercise because the connection between the contraception rule and any impact on the employer's religious exercise is too attenuated. It further argued that an employee's</p>

independent decision to use contraception severs the causal chain between government action and any potential impact on the employer's religious exercise. Finally, the brief maintained that employers do not have the right to impose their religious beliefs on their employees.

***United States v. Utah* (U.S.D.C. Utah, 2012)**

In March 2011, Utah's state legislature passed HB 497, an anti-immigrant law which, among other things, allows local law enforcement to check the citizenship of individuals arrested—or merely stopped—for misdemeanors and felonies. Likewise, if an officer has reasonable suspicion that a car's driver or passengers are undocumented, the officer must check the immigration status of every individual in the vehicle. ADL submitted a brief supporting a motion for preliminary injunction against the statute. While the Court is reserving its ruling until the U.S. Supreme Court acts, the Court issued a temporary injunction on major provisions of the law.

INDEX OF CASES FILED/DECIDED IN 2013-2014

Civil Liberties

Annex Medical v. Sebelius (U.S.C.A. 8th Circuit, 2013)
Autocam Corporation v Sebelius (U.S.C.A. 6th Circuit, 2013)
Conestoga Wood Specialties Corp. v. Sebelius (U.S.C.A. 3d Circuit, 2013)
Eden Foods v. Sebelius (U.S.C.A. 6th Circuit, 2013)
Gilardi v. HHS (U.S.C.A. DC Circuit, 2013)
Hobby Lobby Stores v. Sebelius (U.S.C.A. 10th Circuit, 2013)
Korte v. Sebelius (U.S.C.A. 7th Circuit, 2013)
Legatus v. Sebelius (U.S.C.A. 6th Circuit, 2013)
Liberty University v. Lew (U.S.C.A. 4th Circuit, 2013)
McCullen v. Coakley (U.S. Supreme Court, 2013)
Newland v. Sebelius (U.S.C.A. 10th Circuit, 2013)
O'Brien v. HHS (U.S.C.A. 8th Circuit, 2012)
Burwell, et al. v. Hobby Lobby Stores, Inc. et al. (U.S. Supreme Court, 2014)

Discrimination

Al Falah Center v. Township of Bridgewater (U.S.C.A. 3d Circuit, 2014)
Arce v. Huppenthal (U.S.C.A. 9th Circuit, 2013)
Bishop v. Smith (U.S.C.A. 10th Circuit, 2014)
Bostic v. Schaefer (U.S.C.A. 4th Circuit, 2014)
Bourke v. Beshear (U.S.C.A. 6th Circuit, 2014)
DeBoer v. Snyder (U.S.C.A. 6th Circuit, 2014)
Griego v. Toulouse (New Mexico Supreme Court, 2013)
Kitchen v. Herbert (U.S.C.A. 10th Circuit, 2014)
Mount Holly Township v. Mount Holly Gardens Citizens in Action Inc., (U.S. Supreme Court, 2013)
Perry v. Brown (U.S. Supreme Court, 2013)
Schuette v. Coalition to Defend Affirmative Action (U.S. Supreme Court, 2013)
Sevcik v. Sandoval and Jackson v. Abercrombie (U.S.C.A. 9th Circuit, 2013)
Tanco v. Haslam (U.S.C.A. 6th Circuit, 2014)

Hate Crimes

People v. DeLee (New York Court of Appeals, 2013)
United States v. Miller (U.S.C.A. 6th Circuit, 2014)

Immigration

United States v. Utah (U.S.D.C. Utah, 2012)

Separation of Church and State

Bronx Household v. Board of Education of the City of New York (U.S.C.A. 2d Circuit, 2012)
Duncan v. New Hampshire (New Hampshire Supreme Court, 2014)
Freshwater v. Mount Vernon Board of Education (Ohio Supreme Court, 2012)
Holt v. Hobbs (U.S. Supreme Court, 2014)
LaRue v. Colorado Board of Education (Colorado Supreme Court, 2014)
Town of Greece v. Galloway (U.S. Supreme Court, 2013)