




Civil Rights Division ♦ Legal Affairs Department
IN THE COURTS

2012-2013

The following summarizes the active cases on ADL's current legal docket as of June 2013.

DECISION KEY

-  Favorable to ADL
-  Contrary to ADL
-  Decision on other grounds

THE U.S. SUPREME COURT

2012-2013 DECISIONS FROM U.S. SUPREME COURT

Discrimination
Marriage
equality



***United States v. Windsor* (U.S. Supreme Court, 2013)**

Edith Windsor married her spouse, Thea Spyer, in Canada in 2007. Spyer died in 2009 following a long illness. Because Section 3 of DOMA prohibits the federal government from recognizing the marriages of same-sex couples, Windsor was unable to claim the estate tax deduction available to the spouses of straight married couples and was required to pay more than \$360,000 in taxes. Windsor sued the federal government for failing to recognize her marriage. ADL submitted a brief urging the Court to find DOMA unconstitutional because it improperly enshrines one particular religious view of marriage into civil law. The Supreme Court declared Section 3 of DOMA unconstitutional.

Discrimination
Marriage
equality



***Hollingsworth v. Perry* (U.S. Supreme Court, 2013)¹**

Proposition 8, the California ballot measure restricting marriage to opposite-sex couples, was held unconstitutional by the Ninth Circuit Court of Appeals because it violates our nation's fundamental concepts of liberty and equality. ADL submitted a brief urging the Court to affirm the lower court's decision and reject arguments that religious or moral disapproval is a legitimate basis for a law that strips Californians of their state right to a civil marriage. The Court found that the supporters of Proposition 8 lacked standing to appeal the district court's decision. Therefore, the district court's order declaring the law unconstitutional and enjoining California officials from enforcing it

Civil Liberties
Voting Rights



***Shelby County v. Holder* (U.S. Supreme Court, 2013)**

This case is a second challenge to the constitutionality of Congress' 2006 decision to extend Section 5 of the Voting Rights Act for an additional 25 years. In 2009, in *Northwest Austin Municipal Utility District v. Holder*, the United States Supreme Court declined to rule on the constitutionality of the VRA extension, finding instead that Northwest Austin was entitled to "bail out" of the requirements of Section 5. This case places squarely before the Court the question of whether the extension was constitutional. ADL once again joined with the nearly 200 organizations that comprise

¹ Although *Hollingsworth v. Perry* was decided on other grounds, the end result was favorable.

the Leadership Conference on Civil and Human Rights and urged the Court to uphold the VRA extension, arguing that it was reasonable for Congress to conclude that Section 5 is still necessary, and that history shows that gains in minority political participation can be reversed if the political branches and the courts fail vigilantly to protect them. The Supreme Court struck down Section 4 of the VRA, a key provision of the statute.

Discrimination
Affirmative
Action



Fisher v. University of Texas (U.S. Supreme Court, 2012)

Fisher v. University of Texas concerns the affirmative action admissions policy of the University of Texas at Austin. The case, brought by undergraduate Abigail Fisher in 2008, asks that the court either declare the admissions policy of the University inconsistent with, or entirely overrule *Grutter v. Bollinger*, a 2003 case in which the Supreme Court ruled that race could play a limited role in the admissions policies of universities. The United States District Court heard *Fisher v. University of Texas* in 2009 and upheld the legality of the University's admission policy. The case was appealed to a three-judge panel from the Fifth Circuit which also ruled in the University's favor. ADL urged the U.S. Supreme Court to uphold the University of Texas' admissions policy, saying that the policy does not impose quotas, assign people to categories based on their race, or use race as a determinative factor in making admissions decisions. Rather, its consideration of race as only one factor in a holistic review of each applicant application is a proper means to achieve a diverse student body. The Court returned the case for further consideration by lower courts, thus affirming that diversity in education is critically important.

Discrimination
Retaliation



University of Texas Southwestern Medical Center v. Nassar (U.S. Supreme Court, 2013)

This case addresses whether the retaliation provision of Title VII of the Civil Rights Act and other similarly worded statutes require a plaintiff to prove but-for causation (i.e., that an employer would not have taken an adverse employment action but for an improper motive), or instead require only proof that the employer had a mixed motive (i.e., that an improper motive was one of multiple reasons for the employment action). ADL joined a distinguished group of organizations urging the Court to find that Title VII is violated if an illegitimate motive plays a meaningful role in an adverse employment decision. The Court held that holding retaliation claims require the plaintiff to prove but-for causation, a stricter standard of proof than other forms of discrimination claims.

Civil Liberties
Voting Rights



Arizona v. Inter Tribal Council of Arizona (U.S. Supreme Court, 2013)

This case addresses Proposition 200, an Arizona law requiring would-be voters to provide proof of citizenship to register to vote. ADL joined a brief written by the NAACP Legal Defense and Education Fund that urges the Supreme Court to strike down the law. The brief documents a pattern in United States history characterized by an expansion of the right to vote followed by attempts to disenfranchise minority voters. It argues that, in accord with this pattern, the National Voter Registration Act was an important step towards universal suffrage, and that Proposition 200 is a step

backwards that seeks to disenfranchise Latino voters. The Court struck down the law.

Civil Liberties
International
Human Rights
Law



***Kiobel v. Royal Dutch Petroleum* (U.S. Supreme Court, 2013)**

Kiobel involves a group of Nigerians filing a lawsuit in the U.S. against three oil companies, seeking to hold them liable for human rights abuses allegedly committed on their behalf by Nigerian soldiers. It invokes the Alien Tort Statute (ATS), which allows foreigners to bring lawsuits in U.S. federal courts for serious violations of international human rights laws. The issue before the Court was whether the ATS permits actions against defendant organizations and corporations, or whether they were intended to apply only against natural persons. ADL joined a coalition brief supporting the position that Congress did not intend to limit the ATS only to actions against natural persons. The Court did not decide *Kiobel* but rather ordered it be reargued next Term, and expanded the scope of its review to include whether ATS applied to violations of international law when those occurred on foreign soil. ADL again joined a coalition brief supporting the position that Congress did not intend to limit the ATS only to actions arising in U.S. territories.

Civil Liberties
Immigration



***Arizona v. U.S.* (U.S. Supreme Court, 2012)²**

In April 2010, Arizona enacted what was considered the most restrictive anti-immigration bill in the country. The law's provisions included a requirement that local law enforcement officers check for evidence of legal status when they have "reasonable suspicion" that someone they have stopped is unlawfully in the country. At the district court level, ADL submitted a brief supporting a motion for preliminary injunction against the law in a case called *Friendly House v. Whiting*. In *U.S. v. Arizona*, a separate case brought by the U.S. Government challenging the law on preemption grounds, the Court granted a preliminary injunction on key provisions of the law. On the appeal, ADL again filed in support of the preliminary injunction, and again the League filed an *amicus* brief with the U.S. Supreme Court when the case was granted cert. All of ADL's *amicus* briefs highlighted the security issues at stake with the new law, underscoring ADL's concern that the new policy will deter victims and witnesses from coming forward to report crimes, particularly hate crimes, and that will impact negatively on the ability of local law enforcement agencies to keep communities safe. The U.S. Supreme Court invalidated a number of provisions of the Arizona law, but allowed Section 2, the provision which directs local law enforcement officers to check an individual's immigration status when they stop the person for violating the law and have a "reasonable suspicion" that the individual may be undocumented, to remain in place.

Discrimination
Passport
Designation



***Zivotofsky v. Clinton* (U.S. Supreme Court, 2012)**

This case involves the right of American citizens born in Jerusalem to list Israel as their place of birth on their passports, rather than just "Jerusalem." Despite a 2002 law directing the Secretary of State, upon the request of the citizen or the citizen's legal

²icates portions of the decision were favorable and portions of the decision were unfavorable.

guardian, to record the place of birth as Israel, the State Department manual currently provides that the passports of American citizens born in Jerusalem must say “Jerusalem,” reflecting official U.S. government policy regarding the unresolved status of Jerusalem. As part of its argument, the State Department argued that the subject matter was inappropriate for court resolution as it is a “political question.” ADL led a coalition of ten Jewish organizations, in addition to the Association of Proud American Citizens Born in Jerusalem, Israel, in filing an amicus brief which argued that the matter was not a political question and is appropriate for court resolution. The brief also argued that Americans born in Jerusalem should have the same right to indicate their country of birth on their passport that is currently available to other American citizens born abroad. The Court agreed with the League and rejected the argument that the issue at hand was a “political question” inappropriate for court resolution, directing the case back to the lower court for review on the merits.

Discrimination
Ministerial
Exception



Hosanna-Tabor Evangelical Lutheran v. EEOC (U.S. Supreme Court, 2012)

This case concerns the scope and procedural treatment of a constitutional exception to employment discrimination laws – called the “ministerial exception” – for houses of worship and other religious institutions. That exception, grounded in the First Amendment, allows religious institutions to discriminate in the hiring of clergy, religious school teachers, and others engaged in core religious functions. ADL took the position that the exception should not apply to employees of such religious institutions who are not engaged in core religious functions; those employees should be covered by basic anti-discrimination laws. *Hosanna* involved an employee who fell in between – a teacher of secular subjects in a religious school who also engaged in some limited religious activities. ADL’s brief, filed in support of respondents, argued that the exception should be treated as an “affirmative defense.” As a result, an employee would have an opportunity to make her case that she should be covered by anti-discrimination laws, and not have her claims immediately dismissed because she works for a religious institution. The ultimate burden would then be on the employer to prove that the ministerial exception applies. The Court issued a unanimous decision ruling that the teacher should be considered a “minister” as defined by her church, rejecting her discrimination claim. In its opinion, the Court agreed with ADL’s view that the “ministerial exception” should be considered an affirmative defense.

Civil Liberties
International
Human Rights
Law



Mohamad v. Palestinian Authority, et al. (U.S. Supreme Court, 2012)

Mohamad involves a U.S. citizen who was allegedly tortured to death in a Palestinian prison in 1995. The deceased’s family sued the Palestinian Authority and the PLO (as well as several Palestinian officials) under the Torture Victim Protection Act (TVPA), which allows victims of torture to bring U.S. civil lawsuits for damages against the “individual” who – while acting on behalf of a foreign government – was responsible for the torture. See also, *Kiobel*, below. The issue before the Court was whether the TVPA permits actions against defendant organizations and corporations, or whether they were intended to apply only against natural persons. ADL joined a coalition brief supporting the position that Congress did not intend to limit the TVPA (and ATS in the case of

Kiobel) only to actions against natural persons. While the Court heard these *Mohamad* and *Kiobel* in tandem, the Court only issued a decision in *Mohamad*. The Court held that word “individuals” in the TVPA encompasses only natural persons and does not impose liability against organizations. The Court did not decide *Kiobel* but rather ordered it be reargued next Term, and expanded the scope of its review to include whether ATS applied to violations of international law when those occurred on foreign soil (see pending cases below).

FILED AND AWAITING DECISION IN U.S. SUPREME COURT

-None-

THE APPELLATE AND STATE COURTS

2012-2013 DECISIONS FROM APPELLATE AND STATE COURTS

Discrimination
Government
funding

SETTLED

Cradle of Liberty Council, Inc., Boy Scouts of Am. v. City of Philadelphia (U.S.C.A. 3d Circuit, 2012)

The City of Philadelphia requires all organizations enjoying the subsidized or free use of City buildings to agree that they will not use that subsidized property to discriminate based on sexual orientation, religion and other characteristics. The Cradle of Liberty Council has refused to agree not to discriminate, and in 2003, they ousted a seventeen-year-old Scout from membership because he is gay. On May 31, 2007, the City passed a resolution stating that the Council’s discrimination in its use of the City’s building subsidy is contrary to the City’s nondiscrimination policy. The City offered the Boy Scouts a choice of three options: move out; pay fair market rent, or stop using the rent-free building to discriminate. In May 2008, days before it was required to surrender the property, the Council filed suit in federal court, asserting claims under the Constitutions of the United States and Pennsylvania and claims under Pennsylvania law. ADL joined a group of religious organizations, civil-rights groups, and faith leaders who together argued that Philadelphia’s taxpayers should not be forced to subsidize a program of divisive discrimination that violates local anti-discrimination law and policy and that systematically excludes many Philadelphians because of their religion and/or sexual orientation.

Windsor v. U.S. (U.S.C.A. 2d Circuit, 2012). In 2007, Edith “Edie” Windsor and Thea Spyer, residents of New York, married in Toronto, Ontario, after 40 years of a committed relationship. Spyer died in 2009, at which time New York legally recognized marriages of same-sex couples performed in other jurisdictions. After Spyer’s death, Windsor was required to pay more than \$363,000 in federal estate taxes on her inheritance. If federal law accorded their marriage the same status as marriages of

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Discrimination
Marriage
equality



different-sex couples recognized by their state, she would have paid no taxes. Defendants are appealing a February 2012 New York District court decision invalidating Section 3 of the “Defense of Marriage Act” (DOMA), a discriminatory and unconstitutional law passed in 1996.

Joining the ADL on the brief was a distinguished group of religious and cultural organizations, representing many different faith traditions and cultures. The brief argues that religious views of marriage are distinct and separate from a civil understanding of marriage; DOMA flouts this longstanding Establishment Clause principle by not only writing one particular religious understanding of marriage into federal law but by failing to provide a secular reason for doing so. The brief also argues that DOMA fails to satisfy equal protection and due process constitutional analyses.

Civil Liberties Voting Rights



***Applewhite v. Commonwealth of Pennsylvania* (Pennsylvania Supreme Court, 2012)**

At issue in Applewhite is a new state law signed March 14, 2012 that requires voters casting ballots in person to have a photo ID from a limited number of sources, such as a driver’s license or a government-issued employee ID. ADL submitted a brief opposing the statute and supporting a motion for preliminary injunction. The brief detailed Pennsylvania’s history of disenfranchising people of color and women and argued that the new law disproportionately disadvantages Latino voters, who are more likely to lack the required ID, less likely to be able to obtain the proper ID, and more likely to be disenfranchised by poll workers on Election Day than many groups. The Court barred the state from enforcing the voter photo- identification law in the coming election, saying it is logistically impossible to make IDs available to everyone who needs one. The Court ruled that while election officials can request an ID on Election Day, voters without one can cast ballots that will be counted.

Church-State Separation Consideration of foreign law



***Awad v. Ziriax, et al.* (U.S.C.A. 10th Circuit, 2012)**

In November 2010, Oklahoma voters approved the “Save Our State Amendment.” This state constitutional provision specifically prohibits Oklahoma courts from considering Islamic (Sharia) Law, as well as generally prohibiting consideration of legal precepts from other nations or cultures. A federal district court granted a preliminary injunction barring implementation of the amendment. Arguing that the amendment violates the federal Establishment Clause, ADL’s amicus brief asked the Tenth Circuit to affirm the lower court decision. Specifically, it reasoned that fundamental to the Establishment Clause is a prohibition on approval or disapproval of any particular faith. Furthermore, the plain text of the amendment, as well as the circumstances surrounding its legislative passage, were clearly targeting Islamic tradition. In January 2012, the Tenth Circuit affirmed the lower court decision, invalidating laws that discriminate against a specific faith unless a narrow and compelling government interest can be demonstrated. Applying a strict scrutiny analysis, the Court did not find a compelling government interest.

Discrimination Marriage equality



***Perry v. Brown* (U.S.C.A. 9th Circuit, 2012)**

In 2009, California voters passed an amendment to the California Constitution banning same-sex marriage (“Proposition 8”). Plaintiffs challenged the new state constitutional provision as being a violation of the U.S. Constitution. ADL filed a brief urging the court to find the ban on same-sex marriage unconstitutional. Specifically, the brief argued that the segregated system of domestic partnership and marriage raised serious privacy concerns. Unlike married opposite-sex couples, same-sex couples find themselves repeatedly required to disclose their domestic partnership relationship in order to exercise comparable rights. This violation of privacy can lead to discrimination, violence and loss of dignity. In February 2012, the Ninth Circuit affirmed the lower court decision to strike the law as unconstitutional, holding that there was no basis for singling out gay men and women for denial of a marriage license.

Discrimination
 Marriage
 equality



Massachusetts v. HHS and Hara, Gill, et al. v. OPM (U.S.C.A. 1st Circuit, 2012)

Defendants are appealing a July 2010 Massachusetts district court decision invalidating Section 3 of the “Defense of Marriage Act” (DOMA), a discriminatory and unconstitutional law passed in 1996. The District Court’s decision provided equal protection under the law to all civilly married couples – including same-sex couples – and empowered religious groups with the freedom to choose how to define marriage. Joining the League on the brief was a distinguished group of 21 religious organizations, representing many different faith traditions and cultures. The brief argues that religious views of marriage are distinct and separate from a civil understanding of marriage and that DOMA flouts this longstanding Establishment Clause principle by not only writing one particular religious understanding of marriage into federal law but by failing to provide a secular reason for doing so. The brief also argues that DOMA fails to satisfy equal protection and due process constitutional analyses.

Discrimination
 Public schools



Ithaca School District v. NY State Div. of Human Rights (New York State Court of Appeals, 2012)

The Ithaca City School District in New York State has argued that, as a public school district, it does not fall under the jurisdiction of the New York Human Rights Division or the New York State Human Rights Law. ADL joined a coalition of national and local civil rights organizations in an amicus brief arguing that the Law covers all educational settings, and makes no distinction between public and private schools. The lower court agreed, and found that, in enacting the Human Rights Law, the Legislature intended to cover public schools. In its amicus brief submitted to the New York State Court of Appeals, ADL urges the Court to uphold the lower court ruling, and find that public schools districts and other public educational institutions indeed fall under the relevant statute, Exec. Law § 296(4).

Civil Liberties
 Immigration



Cases related to state immigration laws

After the passage of SB 1070 in Arizona, the subject of the U.S. Supreme Court case Arizona v. U.S. described above, a number of states followed Arizona’s lead and passed similar anti-immigrant legislation. The laws had different elements, but each of them, in some way, required local law enforcement to assist with immigration

enforcement by checking the citizenship status of individuals that are stopped by police. In almost every state that such a law was passed, ADL filed an amicus brief in opposition to the law. Like the brief filed in the U.S. Supreme Court, ADL's briefs focused on the security issues at stake, underscoring ADL's concern that the new policy would deter victims and witnesses from coming forward to report crimes and that would impact negatively on the ability of local law enforcement agencies to keep communities safe. The following are a list of the cases in which ADL filed such briefs.

Hispanic Interest Coalition of Alabama, et al. v. Bentley (U.S.C.A. 11th Circuit, 2012)

In 2011, Alabama enacted the most restrictive anti-immigrant law in the country to date. The law, among other things, grants local law enforcement officers the authority to investigate the immigration status of any person lawfully stopped based on "reasonable suspicion" that they may be in the country unlawfully. ADL submitted a brief to the District Court supporting a motion for preliminary injunction against the law. In September 2011, the District Court declined to enter a preliminary injunction. A few weeks later in October, the 11th Circuit left most of the law intact, but issued a preliminary injunction against two sections: (1) a section of the law requiring schools to determine the immigration status of children enrolling in school for the first time, as well as their parents; (2) a section making it a state crime for illegal immigrants to fail to carry registration documents. In November 2011, ADL filed a brief with the 11th Circuit, supporting a motion for preliminary injunction against the entire law.

Deal, et al. v. Georgia Latino Alliance for Human Rights (U.S.C.A. 11th Circuit, 2012)

In May 2011, Georgia enacted an anti-immigrant law which, among other things, authorized state and local law enforcement officers to investigate the immigration status of any individual who they have "probable cause" to suspect has committed any criminal violation. The law also granted immunity to law enforcement officials for damages or liability resulting from its enforcement. ADL submitted a brief in the District Court. The District Court agreed, and enjoined key provisions of the law. The decision was appealed and ADL has submitted a brief to the 11th Circuit, seeking to affirm the preliminary injunction.

FILED AND AWAITING DECISION IN APPELLATE AND STATE COURTS

Civil Liberties
Reproductive
Rights

***O'Brien v. Health and HHS* (U.S.C.A. 8th Circuit, 2012)**

***Newland v. Sebelius* (U.S.C.A. 10th Circuit, 2013)**

***Korte –Grote v. Sebelius* (U.S.C.A. 7th Circuit, 2013)**

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

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

***Legatus v. Sebelius* (U.S.C.A. 6th Circuit, 2013)**

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

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

***Conestoga Wood Specialties Corp. v. Sebelius* (U.S.C.A. 3d 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. 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 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.

Church-State
Separation
Establishment
Clause

***Americans Civil Liberties Union of Massachusetts v. Kathleen Sebelius* (U.S.C.A. 1st Circuit, 2012)**

At issue in this case are annual grants awarded by the U.S. Department of Health and Human Services (HHS) under the federal Trafficking Victims Protection to the U.S. Conference of Catholic Bishops (USCCB). HHS awarded the grants knowing that USCCB prohibited, based on its religious beliefs, grantees from using any of the federal funds to provide or refer for contraceptive or abortion services. The American Civil Liberties Union of Massachusetts (ACLU) challenged these grants on the grounds that HHS violated the Establishment Clause by permitting USCCB to impose its religious beliefs on sub-grantees in administering the grant. One of the issues in the case is whether ACLU could sue HHS in its capacity as a taxpayer, which is referred to as "taxpayer standing." ADL's amicus brief focuses on this issue and it argues that because the grants were authorized by an Act of Congress, ACLU squarely meets the U.S. Supreme Court's criteria for taxpayer standing.

***Freshwater v. Mount Vernon Board of Education* (Ohio Supreme Court, 2012)**

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Church-State
Separation
Establishment
Clause

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.

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
Passport
Designation

Zivotofsky v. Clinton (D.C. District Court of Appeals, 2012)

This case involves the right of American citizens born in Jerusalem to list Israel as their place of birth on their passports, rather than just "Jerusalem." Despite a 2002 law directing the Secretary of State, upon the request of the citizen or the citizen's legal guardian, to record the place of birth as Israel, the State Department manual currently provides that the passports of American citizens born in Jerusalem must say "Jerusalem," reflecting official U.S. government policy regarding the unresolved status of Jerusalem. Following the decision by the U.S. Supreme Court directing the case back to the lower court for review on the merits, ADL again led an unusually broad-based coalition of other Jewish organizations, in addition to the Association of Proud American Citizens Born in Jerusalem, Israel, in filing an *amicus* brief which argued that "a passport is not a statement of foreign policy," but rather simply involves a ministerial act "a means of identifying and differentiating citizens" based on information they provide. Therefore the statute does not implicate the Executive Branch's foreign policy power and it was within the power of Congress to legislate regarding the issuance of passports. ADL also argued that denying Jerusalem-born American citizens to identify Israel as their place of birth on their passports is discriminatory as that is a right presently accorded to American citizens born in territories not even recognized by the United States.

Church-State
Separation
Government
funding

LaRue v. Colorado Board of Education (Colorado Court of Appeals, 2012)

This lawsuit challenges a school voucher plan that funnels tax dollars allocated for public education to private and religious schools that will use this money to provide an education—including religious education and services—with little or no

government oversight. The lawsuit claims that the voucher plan violates Colorado's Public School Finance Act, as well as several sections of the state constitution. ADL argued that the Colorado Constitution clearly and unequivocally forbids state and local governments from using public money to support religious institutions and religious schools in particular. These constitutional provisions have been further supplemented with statutory laws that prohibit state-funded institutions from discriminating based on religion, sexual orientation, and disability, among other protected characteristics. In violation of these prohibitions, the voucher program disbursed funds received from the State of Colorado – given to it for the express purpose of providing a free, public education to Douglas County students – to private religious institutions that intentionally discriminate in admission based on religion and other protected characteristics.

Discrimination
Marriage
equality

Golinski v. US Office of Personnel Management (U.S.C.A. 9th Circuit, 2012).

Karen Golinski was denied spousal health benefits by her employer, the U.S. Ninth Circuit Court of Appeals in San Francisco. In January 2009, Chief Judge Alex Kozinski ruled that to deny the legally married Golinski the same benefits for her wife, Amy Cunningham, as heterosexual court employees receive for their lawful spouses violated the Ninth Circuit's employment policies prohibiting discrimination based on sexual orientation. The federal Office of Personal Management—an agency of the executive branch—responded that the law governing federal employees' health insurance and the so-called Defense of Marriage Act (DOMA) prevent coverage for the spouses of lesbian and gay federal employees, and instructed Golinski's insurer not to enroll Cunningham. Plaintiff sued the federal government to compel it to stop interfering with the orders of the federal appellate court's chief judge so that Golinski can be provided equal benefits for her wife. On February 22, 2012, U.S. District Court Judge Jeffrey White declared DOMA unconstitutional as applied to Karen Golinski. The US Office of Personnel Management appealed. Defendants are appealing a February 2012 California District court decision invalidating Section 3 of the "Defense of Marriage Act" (DOMA), a discriminatory and unconstitutional law passed in 1996.

Joining the ADL on the brief was a distinguished group of 23 religious and cultural organizations, representing many different faith traditions and cultures. The brief argues that religious views of marriage are distinct and separate from a civil understanding of marriage; DOMA flouts this longstanding Establishment Clause principle by not only writing one particular religious understanding of marriage into federal law but by failing to provide a secular reason for doing so. The brief also argues that DOMA fails to satisfy equal protection and due process constitutional analyses.

Church-State
Separation
Government
funding

Rabbi Merrill Shapiro, et al. v. Kurt Browning (Circuit Ct. Second Judicial Ct., FL, 2012)

ADL is serving as co-counsel in a case brought by clergy, Florida educational associations, and other concerned Floridians which seeks to strike a proposed amendment from Florida's November 2012 ballot. This measure would remove from the Florida Constitution essential church-state protections which prohibit the state

from directly or indirectly funding houses of worship or other religious institutions. The ballot amendment would replace these protections with language requiring public funding of religious individuals or entities under many circumstances. The basis for the lawsuit is that ballot amendment's title and summary are misleading as to the true effect of the measure in violation of the Florida Constitution and a state statute. Specifically, the title, "Religious Freedom," misleadingly suggests to voters that the amendment would expand religious freedom when in fact it would harm religious liberty.

Civil
Liberties
Immigration

United States v. State of 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.

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Discrimination

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