

ADL's Annual Supreme Court Review

Written Materials and Resources

July 8, 2021



**SUPREME
COURT
REVIEW**
2021

NATIONAL CONSTITUTION CENTER



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FIGHTING HATE FOR GOOD

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22nd Annual Supreme Court Review

A Joint Virtual Presentation by ADL and the National Constitution Center
July 8, 2021
12:00pm – 1:30pm EDT

Agenda

1. National Constitution Center Introduction
2. ADL Welcome
3. Supreme Court – 2020 Term
 - Term Overview
 - COVID-19 cases
 - [Tandon v. Newsom](#)
 - [Roman Catholic Diocese of Brooklyn, New York v. Cuomo](#)
 - [South Bay United Pentecostal Church v. Newsom](#)
 - [Harvest Rock Church v. Newsom](#)
 - [Gish v. Newsom](#)
 - LGBTQ+ Rights
 - [Fulton v. Philadelphia](#)
 - [Gloucester County School Board v. Grimm](#)
 - Free Speech
 - [Mahanoy Area School District v. B.L.](#)
 - Voting Rights
 - [Brnovich v. Democratic National Committee](#)
 - Immigration
 - [Sanchez v. Mayorkas](#)
 - Affordable Care Act
 - [California v. Texas](#)
 - Corporate Accountability
 - [Nestlé USA, Inc. v. Doe](#)
 - Juvenile Life Without Parole
 - [Jones v. Mississippi](#)
 - Union Rights
 - [Cedar Point Nursery v. Hassid](#)
 - Native American Rights
 - [United States v. Cooley](#)
4. Looking Ahead
5. Q&A

22nd ANNUAL SUPREME COURT REVIEW

Speaker Biographies



Dahlia Lithwick

Dahlia Lithwick

Dahlia Lithwick is a Senior Editor at Slate.com, where she has been covering the Supreme Court and Jurisprudence since 1999. She was *Newsweek's* legal columnist from 2008 until 2011. Her work has appeared in *The New York Times*, *The New Yorker*, *Harper's*, *The Atlantic*, *New York Magazine*, *The Washington Post*, *Elle*, *Glamour*, and *Commentary*, among other places. She was a weekly legal commentator on National Public Radio's Day to Day and appears regularly on NPR and other radio shows. She is a regular guest on MSNBC, CNN, ABC, and Dan Rather Reports and a legal expert for The Rachel Maddow Show. Lithwick has twice been awarded an

Online Journalism Award for her legal commentary, and twice been selected for The Green Bag's best legal commentary of the year.

Lithwick has either met or interviewed all four of the women who have sat on the Supreme Court. Her 2012 profile of Ruth Bader Ginsburg, who was awarded *Glamour Magazine's* Lifetime Achievement Award, was based on a lengthy interview.

Ms. Lithwick was the first online journalist invited to serve on the Steering Committee for the Reporters Committee for the Freedom of the Press. She also serves on the board of the Jefferson Center for the Protection of Free Speech. She has testified before the United States Congress about access to justice in the era of the Roberts Court and briefed Democratic members of the Senate Judiciary Committee before the Sonia Sotomayor confirmation hearings. Lithwick has held visiting faculty positions at the University of Georgia Law School, The University of Virginia School of Law, and The Hebrew University Law School in Jerusalem. Ms. Lithwick earned her BA from Yale University and her JD from Stanford University. She clerked for the Chief Judge of the Ninth Circuit Court of Appeals.

She is co-author of *Me Versus Everybody* (Workman Press, 2006) and of *I Will Sing Life* (Little, Brown 1992). Her work has been featured in numerous anthologies including *Jewish Jocks* (2012), *What My Mother Gave Me: Thirty-one Women on the Gifts That Mattered Most* (forthcoming), *About What was Lost* (2006); *A Good Quarrel* (2009); *Going Rouge: Sarah Palin, An American Nightmare* (2009); and *Thirty Ways of Looking at Hillary* (2008).



Erwin Chemerinsky

Erwin Chemerinsky

Erwin Chemerinsky is Dean and Jesse H. Choper Distinguished Professor of Law, University of California Berkeley School of Law. Previously he was the founding Dean at University of California, Irvine School of Law, and a professor at Duke Law School, University of Southern California Law School, and DePaul Law School. He is the author of 14 books, with his most recent being, The Religion Clauses: The Case for Separating Church and State (2020) (with Howard Gillman) and Presumed Guilty: How the Supreme Court Has Empowered the Police and Subverted Civil Rights (forthcoming summer 2021). He also is the author of over 200 law review articles and writes regular op-eds, including as a contributing writer for the *Los Angeles Times* and a regular columnist for the *ABA Journal*. He frequently argues appellate cases, including in the Supreme Court. In January 2021, he was chosen as the President-elect of the Association of American Law Schools.



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 also 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. Lawrence is the recipient of the 2019 Ernest L. Boyer Award from the New American Colleges and Universities, and the 2018 Advocacy Award of the Council of Colleges of Arts and Sciences.

An accomplished scholar, teacher and attorney, Lawrence is one of the nation's leading experts on civil rights, free expression, bias crimes, and higher education law. Lawrence has published widely and lectured internationally. He is the author of Punishing Hate: Bias Crimes Under American Law (Harvard University Press), examining bias-motivated violence and how such violence is punished in the United States. He has testified before Congress, appeared as a commentator on CNN, MSNBC, and Fox News, among others, and has frequently contributed op-eds to major news sources. 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*.



Melissa Murray

Melissa Murray

Melissa Murray is the Frederick I. and Grace Stokes Professor of Law at NYU School of Law, where she teaches constitutional law, family law, criminal law, and reproductive rights and justice. Her writing has appeared in a range of legal and lay publications, including the *Harvard Law Review*, the *Yale Law Journal*, the *New York Times*, the *Washington Post*, and the *Nation*. Prior to joining the NYU Law faculty, Murray was the Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley, where she received the law school's Rutter Award for Teaching Distinction, the Association of American Law School's Derrick A. Bell Award, and, from March 2016 to June 2017, served as interim dean of the law school. Murray serves as a legal analyst for MSNBC and is a co-host of *Strict Scrutiny*, a podcast about the Supreme Court and the legal culture that surrounds it. A graduate of the University of Virginia and Yale Law School, Murray served as a law clerk to Sonia Sotomayor, then a judge of the U.S. Court of Appeals for the Second Circuit, and Stefan Underhill of the U.S. District Court for the District of Connecticut. She is a member of the American Law Institute and the New York bar.



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*. Clement'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, he 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. Clement 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.

ADL & NCC SUPREME COURT REVIEW 2021 CASES

Tandon v. Newsom (SCOTUS: decided 4/9/21)

Issue: Clergy and a home Bible study host invoked the Free Exercise Clause to seek a full exemption from California COVID-19 public health orders that restricted the size of in-home gatherings to no more than three combined households at any one meeting. The rule applied equally to all types of in-home gatherings, not just religious gatherings. The Plaintiffs argued that assembling for small-group, at-home religious practices is essential to their faith.

Judgment/Holding: In a 5-4 per curiam decision, the Court granted injunctive relief. The decision enjoined California from enforcing COVID-19 restrictions on private gatherings as applied to applicants' at-home religious exercise, pending final disposition of the case. Notably, the Court held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise. It is no answer that a State treats some comparable secular businesses or other activities as poorly or even less favorably than the religious exercise at issue."

Roman Catholic Diocese of Brooklyn, New York v. Cuomo (SCOTUS: decided 11/25/20)

Issue: The Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of a New York executive order restricting attendance at houses of worship, arguing that the order violated the Free Exercise Clause, particularly when secular businesses in the area were allowed to remain open.

Judgment/Holding: In a per curiam decision, the Court granted injunctive relief, barring New York Gov. Andrew Cuomo from enforcing 10- and 25-person occupancy limits on religious services during the COVID-19 pandemic, pending ultimate disposition of the case.

South Bay United Pentecostal Church v. Newsom (SCOTUS: cert granted 4/26/21)

Issue: A church and member of the clergy invoked the Free Exercise Clause to seek a broad exemption from California COVID-19 public health orders that restricted indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings.

Judgment/Holding: The Court partially granted injunctive relief and granted the petition for certiorari. The Ninth Circuit's ruling is vacated and the case is remanded for further consideration in light of *Tandon v. Newsom*.

ADL Brief: ADL joined 12 religious and civil rights organizations in an [amicus brief](#) led by Americans United for Separation of Church and State. The brief explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with

that original intent, recognizing that religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

***Harvest Rock Church, Inc. v. Newsom* (SCOTUS: injunctive relief granted 2/5/21)**

Issue: A church invoked the Free Exercise Clause to seek a broad exemption from California COVID-19 public-health orders that restrict indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings.

Judgment/Holding: The Court partially granted injunctive relief, allowing indoor worship services to resume pending the final outcome of the case but also allowing the state to enforce restrictions on attendance as well as a ban on singing and chanting.

ADL Brief: In opposing this claim, the [amicus brief](#) joined by ADL explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with that original intent, recognizing religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

***Gish v. Newsom* (SCOTUS: decided 2/8/21)**

Issue: Clergy and congregants from several churches invoked the Free Exercise Clause to seek a full exemption from California COVID-19 public health orders that restrict indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings.

Judgment/Holding: The District Court's ruling upholding California's public health orders is vacated and the case is remanded for further consideration in light of *South Bay United Pentecostal Church v. Newsom*.

ADL Brief: ADL joined an [amicus brief](#) led by Americans United for Separation of Church and State. The brief explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with that original intent, recognizing religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

***Fulton v. City of Philadelphia* (SCOTUS: decided 6/17/21)**

Issue: At issue in this case is a religiously affiliated, taxpayer-funded foster care agency seeking to discriminate against same-sex couples applying to be foster parents. Invoking the Free Exercise Clause, the agency claimed that its religious beliefs about same-sex marriage

supplanted an anti-discrimination clause in its contract with the city and a local anti-discrimination law's prohibition on sexual orientation discrimination.

Judgment/Holding: Justice Roberts wrote the opinion of the Court, ruling in the agency's favor. The Court found that the non-discrimination requirement of Philadelphia's standard foster care contract did not apply to the foster parent screening process. Further, the local anti-discrimination law did not apply because it only covered public accommodations and the Court did not deem foster parent screening to be a public accommodation.

ADL Brief: ADL led an [amicus brief](#) supporting Philadelphia. ADL's amicus brief argues that the agency's sought exemption from anti-discrimination law is not permitted by the Free Exercise Clause because the law is neutral to religion and serves a public interest of the highest order — eradicating discrimination. The brief argues that allowing this exemption violates the Establishment Clause by favoring the agency's religious beliefs over the civil rights of others. Furthermore, the harm from a ruling in the agency's favor would not be limited to LGBTQ+ people because it would open the door wide open to discrimination against religious minorities, undermining religious liberty protections found in anti-discrimination laws across the nation.

Gloucester County School Board v. Grimm (SCOTUS: cert denied 6/28/21)

Issue: Whether schools violate Title IX and/or the Equal Protection clause by requiring transgender students to use multi-user restrooms in alignment with their sex assigned at birth rather than their gender identity, even when even when single-user restrooms are available for all students regardless of gender identity. Under the actual facts of this case, the school board built single-stall restrooms only after a transgender student started using the boys' restroom, and identified these restrooms as specifically for the purpose of being an "alternative" for students with "gender identity issues." The District Court granted summary judgment in the student's favor, saying that the school and school board had violated his rights under both Title IX and the Equal Protection clause. The Fourth Circuit affirmed.

Judgment/Holding: Certiorari denied (the Supreme Court declined to hear the case). This left in place the lower court's decision.

Mahanoy Area School District v. B.L. (SCOTUS: decided 6/23/21)

Issue: At issue in this case is the extent to which K-12 public schools can regulate student speech that occurs off-campus outside of school hours.

Judgment/Holding: In an 8-1 decision with the majority opinion authored by Justice Breyer, the Court ruled that the school district violated the free speech clause of the First Amendment when they suspended a student from the cheerleading team for a vulgar social media post made off-campus and outside of school hours. The Court also recognized that public schools may have a special interest in regulating some particular types of off-campus student speech, including "serious or severe bullying or harassment targeting particular individuals."

ADL Brief: ADL joined a [brief](#) prepared by the National Women's Law Center, Lambda Legal Defense and Education Fund and Lawyers' Committee for Civil Rights Under Law, urging the

Court to ensure that when it comes to off-campus speech, schools can regulate student bullying, harassment, or threats, but not speech that is merely perceived to substantially disrupt school activities. The brief contends that this balance is needed because students belonging to one or more historically marginalized groups — including girls and women, LGBTQ+ students, students of color, and students with disabilities — are especially vulnerable to bullying, harassment, and threats from their peers, but also disproportionately subjected to unwarranted school discipline for speech that school administrators deem “defiant” or “disrespectful.” This standard would ensure that all students can be safe and access equal educational opportunities without victimization by other students, and also not face disparate discipline for their own speech.

Brnovich v. Democratic National Committee

Issue: Section 2 of the Voting Rights Act of 1965 prohibits voting practices and procedures that discriminate on the basis of race, color, or membership in language minority groups. In this case, the U.S. Court of Appeals for the Ninth Circuit held that two Arizona election provisions — one that prohibits third-party ballot collection and another that prohibits the counting of out-of-precinct votes — violated Section 2 because of their discriminatory impact on communities of color. The petitioner in this case, the Republican Arizona Attorney General, asked the Supreme Court to reverse the Ninth Circuit decision.

Judgment/Holding: As of printing, this case has not yet been decided.

ADL Brief: ADL joined 52 other organizations on an amicus [brief](#) led by the Leadership Conference on Civil and Human Rights in support of the Ninth Circuit decision. The brief discusses the vital continuing role of Section 2 to communities of color not just in Arizona but across the nation. It also explains that Section 2 has been a particularly crucial legal tool since the Supreme Court’s gutting of Section 5 and the pre-clearance regime in its 2013 *Shelby County v. Holder* decision. The brief emphasizes to the Court that Section 2 has a vital continuing role in protecting access to the ballot for marginalized communities and the necessity of remaining vigilant to combat discrimination in voting.

Sanchez v. Mayorkas (SCOTUS: decided 6/7/21)

Issue: Whether noncitizens who entered the United States unlawfully and have been granted Temporary Protected Status (TPS) can use the process known as “adjustment of status” to obtain lawful permanent residency in the United States without leaving the country.

Judgment/Holding: In a unanimous opinion authored by Justice Kagan, the Court held that a person who entered the United States unlawfully is not eligible to become a lawful permanent resident under 8 U.S.C. § 1255 even if the United States has granted them Temporary Protected Status. Specifically, the granting of TPS does not qualify as “admission” for purposes of meeting statutory requirements for adjustment of status.

California v. Texas (SCOTUS: decided 6/17/21)

Issue: In 2012, the Supreme Court ruled that the provision of the Patient Protection and Affordable Care Act (ACA) requiring individuals to have health insurance (the individual mandate) was constitutional because it imposed a tax penalty on those who did not comply. Subsequently, Congress changed the tax penalty to \$0, leading to a new constitutional challenge. Texas and several other states, along with two men who did not want to buy health insurance, sued, arguing 1) that the mandate is now unconstitutional because it can no longer be justified as a tax, and 2) if the mandate is unconstitutional, it is not severable from the rest of the ACA and the entire Act must be struck down.

Judgment/Holding: Justice Breyer authored the majority opinion. The Court ruled 7-2 that Plaintiffs lack standing to challenge the individual mandate.

Nestlé USA, Inc. v. Doe (SCOTUS: decided 6/17/21)

Issue: Whether corporations can be held liable under the Alien Tort Statute (ATS) for doing business with suppliers who they know are using child slave labor. The ATS gives federal courts the authority to hear cases filed by foreigners alleging violations of international law. In this case, the plaintiffs sued Nestlé and Cargill in the United States for “aiding and abetting” child slavery at the cacao plantations from which they purchased their cacao and to which they provided “financial and technical assistance.” The plaintiffs alleged that they had been trafficked from Mali to the Ivory Coast as children and forced to work without pay under terrible conditions on cacao plantations – and that Nestlé and Cargill knew of and refused to intervene to stop the use of child slave labor by their suppliers because it resulted in lower prices.

Judgment/Holding: The Court ruled 8-1 against the plaintiffs. Justice Thomas wrote the majority opinion of the Court, holding that plaintiffs must allege domestic conduct – rather than general corporate activity – in order to support application of the ATS.

Jones v. Mississippi (SCOTUS: decided 4/22/21)

Issue: The Supreme Court strictly curtailed the imposition of juvenile life without parole (JLWOP) in 2012’s *Miller v. Alabama* and 2016’s *Montgomery v. Louisiana*. Together, these cases held that JLWOP is unconstitutional for “all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility,” and prohibited judges from imposing this severe sentence unless they found that the defendant’s crime reflected “irreparable corruption.” At barely 15, Brett Jones’ childhood had already been marked by physical and emotional abuse, as well as lack of access to mental health treatment. One day, when Jones’ grandfather tried to hit him again, Jones stabbed him repeatedly, killing him. Although he tried to save his grandfather with CPR, he was unsuccessful. After making minimal efforts to conceal the crime, he confessed to the police. Jones was convicted of murder and sentenced to juvenile life without parole. Despite Jones being a near-model prisoner, at his resentencing, the judge did not consider whether Jones’ crime reflected permanent incorrigibility.

Judgment/Holding: Justice Kavanaugh authored the majority opinion, wherein the Court held 6-3 that the Eighth Amendment does not require a particularized finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

Cedar Point Nursery v. Hassid (SCOTUS: decided 6/23/21)

Issue: The California Agricultural Labor Relations Board issued a regulation allowing union organizers access to agricultural employees at employer worksites under certain circumstances to solicit support for unionization. Cedar Point Nursery operates a nursery in California that raises strawberry plants for producers. In 2015, organizers from the United Farm Workers union ("the UFW") entered the nursery, without providing prior written notice of intent to take access as required by the regulation. The UFW allegedly disrupted the workers, and some workers (not a majority) left their work stations to join the protest. Sometime later, the UFW served Cedar Point with written notice of intent to take access. Cedar Point filed a charge against the UFW with the Board, alleging that the UFW had violated the access regulation by failing to provide the required written notice before taking access. The UFW likewise filed a countercharge, alleging that Cedar Point had committed an unfair labor practice. Cedar Point then sued the Board in federal district court alleging that the access regulation, as applied to them, amounted to a taking without compensation, in violation of the Fifth Amendment, and an illegal seizure, in violation of the Fourth Amendment.

Judgment/Holding: Chief Justice Roberts wrote the majority opinion, holding 6-3 that the regulation constitutes a per se physical taking.

United States v. Cooley (SCOTUS: decided 6/1/21)

Issue: Whether a tribal police officer has the authority to detain temporarily and to search a non-tribe member traveling on a public right-of-way running through a reservation for potential violations of state or federal law.

Judgment/Holding: Justice Breyer wrote the unanimous opinion of the Court, ruling that tribal officers do indeed have this authority. As a general rule, the sovereign powers of a Native American tribe do not extend to the activities of non-tribe members. However, one exception to this general rule is that a tribe retains inherent authority over the conduct of non-tribe members on the reservation "when that conduct threatens or has some direct effect on . . . the health or welfare of the tribe."

In the Courts:

ADL'S LEGAL DOCKET 2019-21

June 29, 2021

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<u>DECISION KEY</u>	
	Favorable to ADL
	Contrary to ADL
	Decision on other grounds
	Favorable and contrary portions of the decision
	Settled

THE U.S. SUPREME COURT

Pending in the U.S. Supreme Court

[Pekoske/Wolf v. Innovation Law Lab](#)

Immigration

(U.S. Supreme Court, 2021)

Asylum

Under the “Remain in Mexico” policy, also known as the Migrant Protection Protocols (MPP), certain asylum seekers arriving at the U.S./Mexico border were forced to return to Mexico to await their U.S. asylum hearing. As of January 2021, tens of thousands of MPP asylum seekers were waiting in Mexico for their asylum hearings, which had been postponed due to the COVID-19 pandemic since March 2020 with no clear dates for when the hearings would resume. ADL joined 110 other nongovernmental organizations and law school clinics on an amicus brief led by Human Rights First and the National Immigration Law Center, arguing that the Supreme Court should hold that the Remain in Mexico policy is unlawful. The brief argues that MPP is an illegal and inhumane policy that denies refugees access to the U.S. asylum system, blocking virtually all MPP individuals from humanitarian protection in the U.S.; that MPP subjects vulnerable people to harms that rival the persecution they fled; and that by implementing MPP, the U.S. violates its legal commitment to *nonrefoulement*, which prohibits the U.S. from sending individuals to any country where they would face a well-founded risk of persecution, torture, or other serious human rights violations.

[Brnovich v. Democratic National Committee/Arizona Republican Party v. Democratic National Committee](#)

Voting Rights

(U.S. Supreme Court, 2021)

Section 2 of the Voting Rights Act of 1965 prohibits voting practices and procedures that discriminate on the basis of race, color, or membership in language minority groups. In this case, the U.S. Court of Appeals for the Ninth Circuit held that two Arizona election provisions – one that prohibits third-party ballot collection and another that prohibits the counting of out-of-precinct votes – violated Section 2 because of their discriminatory impact on communities of color. The petitioner in this case, the Republican Arizona Attorney General, asked the Supreme Court to reverse the Ninth Circuit decision. ADL joined 52 other organizations on an amicus brief led by the Leadership Conference on Civil and Human Rights in support of the Ninth Circuit decision. The brief discusses the vital continuing role of Section 2 to communities of color not just in Arizona but across the nation. It also explains that Section 2 has been a particularly crucial legal tool since the Supreme Court’s gutting of Section 5 and the pre-clearance regime in its 2013 *Shelby County v. Holder*

decision. The brief emphasizes to the Court that Section 2 has a vital continuing role in protecting access to the ballot for marginalized communities and the necessity of remaining vigilant to combat discrimination in voting.

Decided by the U.S. Supreme Court

B.L. v. Mahanoy Area School District

Free Speech



(U.S. Supreme Court, 2021)

At issue in this case is the extent to which K-12 schools can regulate student speech that occurs off-campus. ADL joined a brief prepared by the National Women’s Law Center, Lambda Legal Defense and Education Fund and Lawyers’ Committee for Civil Rights Under Law, urging the Court to ensure that when it comes to off-campus speech, schools can regulate student bullying, harassment, or threats, but not speech that is merely perceived to substantially disrupt school activities. The brief contends that this balance is needed because students belonging to one or more historically marginalized groups — including girls and women, LGBTQ+ students, students of color, and students with disabilities — are especially vulnerable to bullying, harassment, and threats from their peers, but also disproportionately subjected to unwarranted school discipline for speech that school administrators deem “defiant” or “disrespectful.” This standard would ensure that all students can be safe and access equal educational opportunities without victimization by other students, and also not face disparate discipline for their own speech.

Fulton v. City of Philadelphia

Free Exercise Clause

Establishment Clause



(U.S. Supreme Court, 2020)

At issue in this case is a religiously affiliated, taxpayer-funded foster care agency seeking to discriminate against same-sex couples applying to be foster parents. Invoking the Free Exercise Clause, the agency claims that its religious beliefs about same-sex marriage supplant a local anti-discrimination law’s prohibition on sexual orientation discrimination. In rejecting this claim, ADL’s amicus brief asserts that the sought exemption is not permitted by the Free Exercise Clause because the law is neutral to religion and serves a public interest of the highest order — eradicating discrimination. It would violate the Establishment Clause by favoring the agency’s religious beliefs over the civil rights of others. Furthermore, the harm from a ruling in the agency’s favor would not be limited to LGBTQ+ people because it would open the door wide open to discrimination against

religious minorities, undermining religious liberty protections found in anti-discrimination laws across the nation.

South Bay United Pentecostal Church v. Newsom

(U.S. Supreme Court, 2021)

Free Exercise
Clause



At issue in this case is a church and member of the clergy invoking the Free Exercise Clause to seek a broad exemption from California coronavirus public-health orders that restrict indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings. In opposing this claim, the legal brief joined by ADL explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with that original intent, recognizing religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

Harvest Rock Church, Inc. v. Newsom

(U.S. Supreme Court, 2021)

Free Exercise
Clause

COVID-19



At issue in this case is a church invoking the Free Exercise Clause to seek a broad exemption from California coronavirus public-health orders that restrict indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings. In opposing this claim, the legal brief joined by ADL explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with that original intent, recognizing religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

Gish v. Newsom

Free Exercise
Clause

COVID-19



(U.S. Supreme Court, 2021)

At issue in this case is clergy and congregants from several churches invoking the Free Exercise Clause to seek a full exemption from California coronavirus public-health orders that restrict indoor religious gatherings to the same extent or more favorably than similarly situated secular gatherings. In opposing this claim, the legal brief joined by ADL explains that the history of the Free Exercise Clause demonstrates it was never intended to require religious exemptions from laws that protect public health or safety. Rather, it was enacted to address a long history of governmental efforts to suppress particular religious groups based on disapproval of them. Furthermore, the Supreme Court's longstanding interpretation of the Clause has aligned with that original intent, recognizing religious exercise is worthy of respect and accommodation, but not to the extent of jeopardizing the health and safety of others.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania/Trump v. Pennsylvania

Reproductive
Rights

Establishment
Clause



(U.S. Supreme Court, 2020)

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

Church-State
Separation

Discrimination



(U.S. Supreme Court, 2020)

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

Church-State Separation

(U.S. Supreme Court, 2019)

Establishment Clause



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

Civil Liberties

(U.S. Supreme Court, 2019)

Reproductive Rights



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

Immigration



(U.S. Supreme Court, 2019)

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

Discrimination

Civil Liberties



(U.S. Supreme Court, 2019)

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

Discrimination

LGBTQ+ Rights



(U.S. Supreme Court, 2019)

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

Civil Liberties

Voting Rights



(U.S. Supreme Court, 2019)

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

Carpenter v. James

(U.S.D.C. Western District of New York, 2021)

Free Exercise

Discrimination

At issue in this case is a business invoking the Free Exercise Clause of the First Amendment to seek a religious exemption from a New York State anti-discrimination law for the purpose of denying wedding photography services to LGBTQ+ couples. In opposing this claim, the legal brief joined by ADL asserts that such an exemption is not authorized by the Free Exercise Clause and is prohibited by the Establishment Clause. Furthermore, the exemption being sought would undermine the law's prohibition on religious discrimination by authorizing discrimination against religious minorities and others.

Doe v. Hopkinton Public Schools

(U.S.C.A. 1st Circuit, 2021)

Discrimination

LGBTQ+ Rights

This case involves a legal challenge to Massachusetts's anti-bullying statute — namely, that the “emotional harm” prong of the definition of bullying in M.G.L. c. 71, § 37O(a) is unconstitutionally overbroad and vague. ADL has been a key proponent of anti-bullying legislation in Massachusetts and accordingly joined an amicus brief, prepared by GLBTQ Legal Advocates & Defenders (GLAD), to emphasize the vital importance of the emotional harm prong of the Massachusetts anti-bullying law and in particular (1) to bring to the Court's attention the key medical and social science literature illuminating the consequences of emotional harm from bullying, which disproportionately and more severely impacts stigmatized groups, including LGBTQ+ youth; and (2) to clarify that the term “emotional harm” is a well-established and recognized concept in law and medicine, which, in the context of the language and requirements of M.G.L. c. 71, § 37O, provides more than satisfactory notice of the statute's prohibitions.

Resurrection School v. Hertel

Free Exercise

(U.S.C.A. 6th Circuit, 2021)

COVID-19

At issue in this case is a private religious school's Free Exercise clause challenge to a State of Michigan COVID-19 order requiring all persons who are at least five years old to wear face masks whenever they are in a shared space with someone outside their household, including both public and private schools. The brief asserts that in the context of a national pandemic that has taken the lives of 543,000 Americans, including more than 16,900 Michigan residents, the order is fully consistent with all Free Exercise clause standards.

Demkovich v. Saint Andrew the Apostle Parish

First Amendment

(U.S.C.A. 7th Circuit, en banc, 2021)

Establishment Clause

At issue in this case is whether the First Amendment ministerial exception should be expanded to categorically bar any Title VII or other hostile work environment claims by clergy and other ministerial employees of religious organizations. The purpose of the exception is to ensure that faith-based organizations have full control in hiring, firing and disciplining employees who perform religious duties. ADL joined a legal brief rejecting this expansion. The brief asserts that such an expansion is not supported by the First Amendment because it is unnecessary to protect the religious autonomy and freedom faith-based employers. Indeed, it would violate the Establishment Clause by placing hundreds of thousands of employees at risk of workplace harassment and abuse, with no possibility of legal recourse.

Patrick Saget v. Donald J. Trump

Immigration

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

Discrimination

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.

Decided by the Federal and State Courts

[Boston Parent Coalition for Academic Excellence Corp. v. School Committee of the City of Boston](#)

Education

COVID-19



(U.S. District of Massachusetts, 2021)

This case involves a constitutional challenge to a temporary admissions program, developed in the wake of COVID-19, for Boston’s three highly selective Exam Schools. The argument put forth by plaintiff is that the new plan — which involves the suspension of entrance exams in favor of criteria that value high academic standards, increased neighborhood equity, socioeconomic inclusion and racial diversity — is a race-based quota program that purportedly “disfavor[s] Asian and white students.” From ADL’s perspective, however, the program is a constitutional and necessary adjustment in light of COVID-19 that will only serve to improve diversity within the Exam Schools. ADL’s brief, joined by a broad coalition of nonprofit organizations, sports teams, and local business entities, focuses on the beneficial impact of diversity on students’ education, achievement, and overall success, and also explains why Boston businesses have an interest in ensuring the city’s Exam Schools attract, educate, and graduate talented students of diverse backgrounds.

Note: After a court ruling that favored ADL’s position, the Plaintiff moved for a stay of the decision pending appeal. The First Circuit denied the stay.

Free Exercise
Clause

LGBTQ+
Discrimination



[Updegrove v. Herring](#)

(U.S.D.C., Eastern District of Virginia, 2020)

At issue in this case is a business invoking the Free Exercise Clause to seek a religious exemption from a state anti-discrimination law for the purpose of denying wedding photography services to LGBTQ+ couples. In opposing this claim, the legal brief joined by ADL asserts that such an exemption is not authorized by the Free Exercise Clause and prohibited by the Establishment Clause. Furthermore, the sought exemption would undermine the state law's prohibitions on religious discrimination by authorizing discrimination against religious minorities and others.

Free Exercise
Clause

COVID-19



[Legacy Church, Inc. v. Kunkel](#)

(U.S.C.A. 10th Circuit, 2020)

At issue in this case is a church invoking the Free Exercise Clause to seek a full exemption from a New Mexico coronavirus public-health order. The order limits indoor religious services to twenty-five percent of building capacity, which is similar to or less restrictive than limitations on comparable nonreligious activities. In opposing the church's claim, the legal brief joined by ADL asserts that the public health order is fully consistent with all Free Exercise Clause standards. Furthermore, the exemption the church wants is not a permissible religious accommodation. To the contrary, it would violate the Establishment Clause by favoring the church's religious practices (requiring unlimited in-person worship) over a compelling government interest in protecting the health and safety of all of its residents.

Discrimination

LGBTQ+ Rights



[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](#)

Discrimination

(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](#)

Church-State Separation

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

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.

[303 Creative v. Elenis](#)

LGBTQ+ Rights

(U.S.C.A. 10th Circuit, 2020)

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

Discrimination



(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.

Antietam Battleground KOA v. Hogan

Free Exercise Clause

Establishment Clause



(U.S.C.A. 4th Circuit, 2020)

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

Discrimination



(U.S.C.A. 1st Circuit, 2020)

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 Jewish people.

High Plains Harvest Church v. Polis

(U.S.C.A. 10th Circuit, 2020)

Free Exercise
Clause

COVID-19



At issue in this case is a church invoking the Free Exercise Clause to seek a full exemption from a Colorado coronavirus public-health order. The order limits indoor religious services to the lesser of fifty people (one hundred for large houses of worship) or fifty-percent capacity per room, which is similar to or less restrictive than limitations on comparable nonreligious activities. In opposing the church's claim, the legal brief joined by ADL asserts that the public health order is fully consistent with all Free Exercise Clause standards. Furthermore, the exemption the church wants is not a permissible religious accommodation. To the contrary, it would violate the Establishment Clause by favoring the church's religious practices (requiring unlimited in-person worship) over a compelling government interest in protecting the health and safety of all of its residents.

Andrew Wommack Ministries, Inc. v. Polis

(U.S.C.A. 10th Circuit, 2020)

Free Exercise
Clause

COVID-19



At issue in this case is a church invoking the Free Exercise Clause to seek a full exemption from a Colorado coronavirus public-health order. The order limits indoor religious services to the lesser of 175 attendees or fifty percent of room capacity, which is similar to or less restrictive than limitations on comparable nonreligious activities. In rejecting this claim, 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 public health and thereby favoring the church's religious practices (requiring unlimited in-person worship) over the rights, interests, and beliefs of others.

Kennedy v. Bremerton School District

(U.S.C.A. 9th Circuit, 2020)

Free Exercise
Clause

Establishment
Clause



This case involves a second appeal by a public high school football coach who filed a lawsuit claiming religious discrimination under the Free Exercise Clause and employment discrimination laws after he was fired for refusing to stop kneeling in prayer at the football field's 50-yard line immediately following every game. This practice started after the school district directed him to stop leading his team in pre- and post-game prayer, which the Coach had done for eight years prior. The Court denied the first appeal. In opposing this second appeal, the brief joined by ADL asserts that the coach's claims fail because the First

Amendment's Establishment Clause forbids his on-field prayer practice, which pressured the students on the team to participate.

State of Texas v. Hollins

(Supreme Court of Texas; Court of Appeals, 14th Judicial District of Texas, 2020)

At issue in this case is a plan by the Harris County Clerk to send ballot-by-mail applications and voting information to all 2.4 million registered voters in Harris County. The Texas Attorney General sued to block this plan, arguing that the planned mailing exceeded the County Clerk's authority. ADL's Southwest regional office and the Texas NAACP, represented by the Brennan Center, filed a brief defending the authority of the Harris County Clerk.

Following a district judge ruling in *State of Texas vs. Chris Hollins* that the state of Texas may not prevent Chris Hollins, the Harris County Clerk, from sending election materials and resources, including ballot-by-mail applications, to all of the county's registered voters. The State appealed the decision, and on Sept. 18 the Fourteenth Court of Appeals reaffirmed the denial of the State's request for a preliminary injunction in the case. The State then appealed to the Supreme Court of Texas.

On September 25, 2020, ADL Southwest region and the Texas NAACP — represented by the Brennan Center for Justice at NYU Law and Dechert LLP — submitted a brief to the Supreme Court of Texas in support of Harris County Clerk, Chris Hollins, and the lower court decision, emphasizing the overwhelming benefits of sending ballot-by-mail applications to all registered voters and the lack of evidence provided by the State that such a mailing would cause fraud or increased confusion. The brief argues that such a mailing will educate voters and reduce confusion and provide easier access to a safe method of voting for high-risk populations for COVID-19. The brief also argues that it would benefit voters by encouraging those who are eligible for mail ballots to submit their applications early, reducing the likelihood of surges in applications that could slow down processing, and by providing accurate information and guidance to voters.

Cassell v. Snyders

(U.S.C.A. 7th Circuit, 2020)

At issue in this case is a church invoking the Free Exercise Clause and Illinois Religious Freedom Restoration Act (ILRFRA) to seek a full exemption from a State coronavirus public-health order that equally limits similarly situated religious and secular communal gatherings to 10 people or less. In rejecting these claims, the legal brief joined by ADL asserts that the order is fully consistent with all Free Exercise Clause standards and does not violate the ILRFRA because it is the best way to advance Illinois's compelling interest in protecting residents from a deadly disease.



Free Exercise
Clause

COVID-19



Calvary Chapel of Bangor v. Janet Mills
(U.S.C.A. 1st Circuit, 2020)

At issue in this case is a church invoking the Free Exercise Clause to seek a full exemption from a Maine coronavirus public-health order that equally limits religious and secular communal gatherings to 50 people or less. In rejecting this claim, 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 favoring the church's religious practices (requiring in-person worship) over other faiths, which would jeopardize the health of others.

Free Exercise
Clause

COVID-19



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.

Church-State
Separation

Discrimination



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.

[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)

Immigration



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)

Discrimination



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 antisemitic 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

Discrimination

LGBTQ+
Rights



(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

Immigration

Discrimination



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

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. U.S. Immigration and Customs Enforcement

Immigration

Federalism



(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](#)

Immigration

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

Federalism



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)

Church-State Separation

Civil Liberties



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](#)

Civil Liberties

(North Carolina Supreme Court, 2019)

Discrimination



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](#)

Discrimination

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

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](#)

Civil Liberties

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

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)

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)

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)

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)

Church-State
Separation

Establishment
Clause



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)

Church-State
Separation

Establishment
Clause



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.