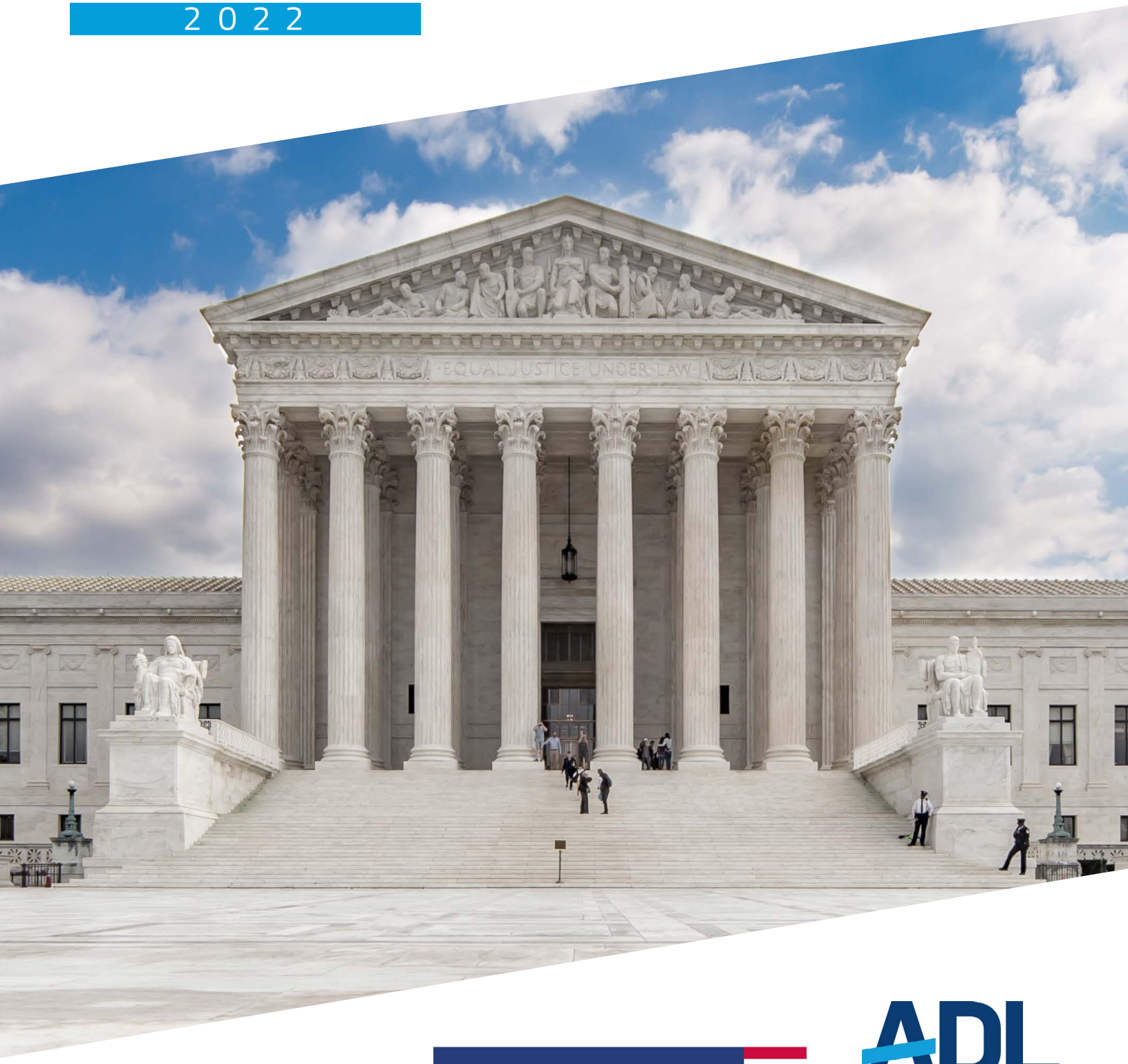
SUPREME COURT REVIEW 2022

JULY 12, 2022

Written Materials and Resources



NATIONAL CONSTITUTION CENTER

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A Joint Virtual Presentation by ADL and the National Constitution Center

Tuesday, July 12, 2022

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Speaker Biographies

Photo of Erwin Chemerinsky

Erwin Chemerinsky

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law.

Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. From 1980-1983, he was an assistant professor at DePaul College of Law.

He is the author of fifteen books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction. His most recent books are Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights (Liveright 2021), and The Religion Clauses: The Case for Separating Church and State (with Howard Gillman) (Oxford University Press 2020).

He also is the author of more than 200 law review articles. He is a contributing writer for the Opinion section of the Los Angeles Times, and writes regular columns for the Sacramento Bee, the ABA Journal and the Daily Journal, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court.

In 2016, he was named a fellow of the American Academy of Arts and Sciences. In 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States. In 2022, he is the President of the Association of American Law Schools.

Education: B.S., Northwestern University (1975), J.D., Harvard Law School (1978)

Photo of Gregory G. Garre

Gregory G. Garre

Gregory Garre is a partner in the Washington, D.C. office of Latham & Watkins LLP and chair of the firm's Supreme Court and appellate practice. He previously served as the 44th Solicitor General of the United States, Principal Deputy Solicitor General, and Assistant to the Solicitor General, and is the only person to have held all of those positions within the Office of the Solicitor General. He has argued 47 cases before the Supreme Court and scores of additional cases before the courts of appeals. His Supreme Court cases include *Fisher v. University of Texas, Ashcroft v. Iqbal, FCC v. Fox,* and *Massachusetts v. EPA*. Following his graduation from law school, he served as a law clerk to Chief Justice William H. Rehnquist, and to Judge Anthony J. Scirica of the United States Court of Appeals for the Third Circuit. He speaks frequently on issues related to the Supreme Court and appellate practice.

Photo of Amy L. Howe

Amy L. Howe

Until September 2016, Amy Howe served as the editor and reporter for SCOTUSblog, a blog devoted to coverage of the Supreme Court of the United States; she continues to serve as an independent contractor and reporter for SCOTUSblog. Before turning to full-time blogging, she served as counsel in over two dozen merits cases at the Supreme Court and argued two cases there. From 2004 until 2011, she co-taught Supreme Court litigation at Stanford Law School; from 2005 until 2013, she co-taught a similar class at Harvard Law School. She has also served as an adjunct professor at American University's Washington College of Law and Vanderbilt Law School. Amy is a graduate of the University of North Carolina at Chapel Hill and holds a master's degree in Arab Studies and a law degree from Georgetown University.

Photo of Fred Lawrence

Fred 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.

Photo of Dahlia Lithwick

Dahlia Lithwick

Dahlia Lithwick is a senior editor at Slate, and in that capacity, has been writing their "Supreme Court Dispatches" and "Jurisprudence" columns since 1999. Her work has appeared in the New York Times, Harper's, The New Yorker, The Washington Post, The New Republic, and Commentary, among other places. She is host of Amicus, Slate's award-winning biweekly podcast about the law and the Supreme Court.

In 2018, Lithwick received the American Constitution Society's Progressive Champion Award, and the Hillman Prize for Opinion and Analysis. Lithwick won a 2013 National Magazine Award for her columns on the Affordable Care Act. She has been twice awarded an Online Journalism Award for her legal commentary. She was inducted into the American Academy of Arts and Sciences in October 2018. In 2021, she was a recipient of the Women's Media Center's Exceptional Journalism Awards. In 2021 she won a Gracie Award for Amicus Presents: The Class of RBG, which featured the last in-person audio interview with Ruth Bader Ginsburg.

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. She was the first online journalist invited to be on the Reporters Committee for the Freedom of the Press. She has testified before Congress about access to justice in the era of the Roberts Court and how #MeToo impacts federal judicial law clerks. She has appeared on CNN, ABC, The Colbert Report, the Daily Show and is a frequent guest on The Rachel Maddow Show.

Ms. Lithwick earned her BA in English from Yale University and her JD degree from Stanford University. Her new book, Lady Justice, is forthcoming from Penguin Press (September 2022). She is co-author of Me Versus Everybody (Workman Press, 2006) (with Brandt Goldstein) and of I Will Sing Life (Little, Brown 1992) (with Larry Berger). 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 (2013), 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).

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Overview of Cases Discussed

Kennedy v. Bremerton School District (SCOTUS: decided 6/27/22)

Issue: A public high school football coach 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 he had done for eight years prior. He sued, claiming religious discrimination under the Free Exercise Clause of the First Amendment and employment discrimination laws.

Judgment/Holding: In a 6-3 opinion by Justice Gorsuch, the Court ruled that the coach's conduct was protected by the Free Exercise and Free Speech Clauses of the First Amendment. In the process, the Court did away with the test laid out in *Lemon v. Kurtzman* (1971) for determining whether a government law or practice violates the Establishment Clause.

ADL Brief: ADL joined 33 religious organizations, religious denominations, and local clergy in an *amicus brief* in support of the school district. The brief argues that allowing the football coach to lead the team in prayers at football games undermines the freedom of conscience of student athletes — who may wish to refrain from joining the prayer but who may feel overwhelming pressure to please their coach. It also argues that those student athletes who are able to resist the coach's pressure are at increased risk of harassment and bullying, from both students and teachers. Moreover, religious minorities are likely to bear the brunt of that bullying, which causes short-term and long-term harms.

Carson v. Makin (SCOTUS: decided 6/21/22)

Issue: At issue in this case is a Free Exercise challenge to a Maine secondary school tuition assistance program. Over half of the state's school districts do not have public secondary schools. To provide for high school education in those school districts, Maine pays for students to attend public or private schools which provide secular education (referred to in the case as "nonsectarian" schools), including religiously affiliated schools that do not include religious instruction as part of the curriculum. The lawsuit was brought by parents seeking to send their children to religious schools.

Judgment/Holding: In a 6-3 opinion by Chief Justice Roberts, the Court held that Maine's requirement that taxpayer-funded tuition assistance payments be limited to "nonsectarian" education violates the Free Exercise Clause of the First Amendment.

ADL Brief: ADL joined 23 other civil rights and religious organizations in an *amicus* brief arguing that the history of the Free Exercise Clause reflects that it does not require states to fund religious education. To do so would be an unwarranted and substantial expansion of the Free Exercise Clause contrary to the Court's existing precedent.

Shurtleff v. Boston (SCOTUS: decided 5/2/22)

Issue: 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, as part of the city's flag-raising program.

Judgment/Holding: In a 9-0 opinion by Justice Breyer, the Court held that Boston's flag-raising program – which has for years permitted groups to hoist various flags in front of City Hall – did not constitute government speech. As a result, the city's refusal to allow petitioners to fly their flag violated the Free Speech Clause of the First Amendment because it was determined to be content-based discrimination.

ADL Brief: ADL filed an *amicus* brief highlighting that the consequence of a finding that Boston's City Hall flagpoles are a public forum, rather than a forum for government speech, would be that anyone could express any viewpoint from them, subject only to reasonable time, place, and manner restrictions. Such a decision would have serious, real-world ramifications precisely because flying a flag from a government flagpole is prototypical government speech. Finding a free speech right for any member of the public to fly any flag on Boston's City Hall flagpoles would give private speakers the ability to falsely present their own message as government approved.

Dobbs v. Jackson Women's Health Organization (SCOTUS: decided 6/24/22)

Issue: Mississippi passed a law in 2018 that bars abortions after the 15th week of pregnancy, with limited exceptions. This was in clear contradiction to the "fetal viability" standard laid out in *Roe v. Wade*.

Judgment/Holding: In a 6-3 opinion by Justice Alito, the Court ruled that the Due Process Clause of the 14th Amendment does not confer a Constitutional right to abortion, nor is there any other basis for a Constitutional right to abortion. The Court explicitly and wholly overruled the 49 years of precedent set by *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The authority to regulate abortion reverts to the people and their elected representatives.

ADL Brief: ADL joined with the National Women's Law Center and 71 other organizations on an *amicus* brief urging that the Mississippi law be found unconstitutional. The brief focuses on due process and explains that the devastating impact of allowing a pre-viability abortion ban — or overturning the right to abortion entirely — will be the denial of liberty and equality of people who can become pregnant. The brief emphasizes how gutting or overturning the right to abortion would undermine the bodily autonomy of people forced to carry a pregnancy to term; limit the ability of people who can become pregnant to participate equitably in social and economic life; and make it more difficult to navigate life's course free from sex stereotypes regarding the capabilities and expected social roles of women. It highlights how such abortion bans especially harm people with disabilities, people facing challenges due to poverty, LGBTQ+ people, and people of color. The brief also responds to Mississippi's argument that the advances in contraceptive access and the existence of gender equality policies obviates the need for the right to abortion.

Whole Woman's Health v. Jackson (SCOTUS: decided 12/10/21)

Issue: Texas's Senate Bill 8, the Texas Heartbeat Act, prohibits abortions whenever an ultrasound can detect what lawmakers defined as a fetal "heartbeat" – which can happen as early as 6 weeks into pregnancy. The bill's enforcement mechanism is not through the state's authority but rather by empowering private citizens to sue abortion providers and anyone else who aids or abets an abortion after a "heartbeat" is detected. Abortion providers challenged the law pre-enforcement in a lawsuit against judges, clerks and the Texas Attorney General.

Judgment/Holding: In an 8-1 opinion by Justice Gorsuch, the Court ruled that a pre-enforcement challenge under the federal Constitution to Texas S.B. 8 may proceed past the motion to dismiss stage in federal court against certain defendants but not others. Texas abortion providers were permitted to sue state licensors, but not state court officials including judges, clerks and the Texas Attorney General. The case was sent back to the district court.

New York State Rifle & Pistol Association Inc. v. Bruen (SCOTUS: decided 6/23/22)

Issue: New York has long had a proper-cause requirement for obtaining an unrestricted license to carry a concealed firearm. Petitioners challenged the requirement, arguing that it violated their Second Amendment right to keep and bear arms.

Judgment/Holding: In a 6-3 opinion by Justice Thomas, the Court ruled that New York's requirement violated the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms.

Wisconsin Legislature v. Wisconsin Elections Commission (SCOTUS: decided 3/23/22)

Issue: On March 3, 2022, the Wisconsin Supreme Court issued an order adopting a redistricting plan that increased the number of majority-Black Assembly districts in the Wisconsin State Assembly from the existing six districts to seven. In its decision, the court explained that, compared to the other proposed possibilities, this plan resulted in more voters staying in the districts to which they were previously assigned. Moreover, the court found that a seventh majority-Black district was likely needed to satisfy the Voting Rights Act, which specifically bars racial discrimination in election rules. The Wisconsin Legislature, which opposed this plan, asked the Supreme Court to reverse the state court's ruling or issue a stay pending appeal.

Judgment/Holding: In a *per curiam* decision, the Court reversed the Wisconsin Supreme Court, found that the state court was mistaken in its use of race as a factor in selecting a voting map, and sent the case back to the state court.

Justice Sotomayor dissented, joined by Justice Kagan, calling the ruling "unprecedented" and arguing that the majority was engaging in an emergency intervention that was "not only extraordinary but also unnecessary" because the state court had left open the possibility of the map being challenged – in other words, that this intervention was premature.

NetChoice v. Paxton (SCOTUS: decided 5/31/22)

Issue: Texas HB 20 prevents social media platforms with more than 50 million active users in the U.S. each month – including Twitter, YouTube, and Meta – from moderating content based on the user's "viewpoint." It also forbids the placement of warning labels on users' posts to advise viewers that they may contain objectionable content, imposes broad disclosure requirements including a report to the state detailing every "action" taken against "content," and prohibits the filtering of spam e-mail. A district court issued a preliminary injunction stopping the law from going into effect; the Fifth Circuit stayed that injunction.

Judgment/Holding: In a two-line, unsigned 5-4 ruling, the Court vacated the Fifth Circuit's stay.

ADL Brief: ADL joined civil rights and technology policy organizations in an *amicus* brief arguing that the Fifth Circuit's stay should be vacated. The brief argues that HB 20 will render social media effectively unusable to its current audiences, as it will become utterly flooded with "vile, graphic, harmful, hateful, and fraudulent content," while web services become overwhelmed with "wasteful and irrelevant" content.

Biden v. Texas (SCOTUS: decided 6/30/22)

Issue: Under the Trump Administration's "Remain in Mexico" policy, also known as the Migrant Protection Protocols (MPP), most asylum seekers arriving at the U.S./Mexico border were forced to return to Mexico to await their U.S. asylum hearing. The Biden Administration attempted to terminate the program. Texas and Missouri sued to stop termination of the program. The district court entered a nationwide permanent injunction requiring the Department of Homeland Security to reinstate and maintain MPP; the 5th Circuit affirmed.

Judgment/Holding: In a 5-4 opinion by Chief Justice Roberts, the Court held that the Biden Administration did not violate the Immigration and Nationality Act by rescinding MPP, and that the then-Secretary of Homeland Security's Oct. 29, 2021 memoranda doing so constituted valid final agency action.

ADL Brief: ADL joined 60 other civil rights, immigration advocacy, and service provider organizations in an *amicus* brief led by RAICES and Justice Action Center highlighting the inhumane impacts of this policy. The brief argues that the Fifth Circuit misconstrued the claim being brought in order to reach its own desired conclusion, that it ignored precedent regarding procedural law, and that it invented its own procedural standard. The brief further argues that MPP harms children and separates families, enables human trafficking, heightens risks to the most vulnerable migrants, endangers Black migrants, disadvantages Indigenous language speakers, and impedes fair hearings. Throughout, the brief highlights the stories of people who have been affected by MPP and the effects that this policy has had on people at the border.

Garland v. Gonzalez/Johnson v. Arteaga-Martinez (SCOTUS: decided 6/13/22)

Issue: Section 1252(f)(1) of the Immigration and Nationality Act (INA) generally strips every federal court except the Supreme Court of "jurisdiction or authority" to "enjoin or restrain the operation of" certain provisions of the Immigration and Nationality Act, except in lawsuits brought by individual immigrants suing to protect themselves. In practice, lower courts have generally allowed lawsuits seeking to do away with illegal policies or enforce the rights of immigrants, under the reasoning that *enforcing* a law was not the same thing as "enjoin[ing] or restrain[ing] the operation" of a law. In a class-action lawsuit involving the question of whether people detained under the INA are entitled to bond hearings after six months' detention, the Court decided to address the preliminary question of whether the district courts had jurisdiction to entertain respondents' requests for class-wide injunctive relief.

Judgment/Holding: In a 6-3 opinion by Justice Alito, the Court held that district courts do not have jurisdiction to hear respondents' requests for class-wide injunctive relief, even if the lawsuit seeks to enforce the law by requiring the government to follow it. In effect, this limits the ability of district courts to address systemic actions by immigration enforcement agencies.

Patel v. Garland (SCOTUS: decided 5/16/22)

Issue: Pankajkumar Patel, an Indian immigrant who has lived in the U.S. for almost 30 years, was placed in a deportation proceeding before an immigration judge and charged with being present in the U.S. without admission or parole. Patel renewed his application for adjustment in his green card status as a defense against deportation. However, the Department of Homeland Security (DHS) denied the request, arguing that Patel was ineligible because he erroneously marked "yes" on a driver's license application asking if he was a U.S. citizen despite his claim that he marked the citizen box by mistake. The question before the Court was whether 8 U.S.C. §1252(a)(2)(B)(i) preserves the jurisdiction of federal courts to review a nondiscretionary determination that a noncitizen is ineligible for certain types of discretionary relief.

Judgment/Holding: In a 5-4 opinion by Justice Barrett, the Court found that federal courts lack jurisdiction to review facts found as part of any judgment relating to the granting of discretionary relief in immigration proceedings enumerated under 8 U.S.C. § 1252(a)(2) and as a result the decision by DHS was unreviewable and final. Justice Gorsuch filed a dissenting opinion, in which Justices Breyer, Sotomayor, and Kagan joined. "It is a bold claim promising dire consequences for countless lawful immigrants," Gorsuch wrote in his dissent. "And it is such an unlikely assertion of raw administrative power that not even the agency that allegedly erred, nor any other arm of the Executive Branch, endorses it."

Biden v. Missouri/Becerra v. Louisiana (SCOTUS: decided 1/13/22)

Issue: These two consolidated cases address a challenge to a regulation issued by the Secretary of Health and Human Services requiring facilities that participate in Medicare and Medicaid to ensure that their employees are vaccinated against COVID–19 unless they are eligible for a medical or religious exemption. Two district courts enjoined enforcement of the rule; the federal government asked the Supreme Court to stay those injunctions.

Judgment/Holding: In a 5-4 *per curiam* opinion, the Court granted the applications to stay the two injunctions, thus allowing the rule to go into effect. Justice Thomas filed a dissent, joined by Justices Alito, Gorsuch, and Barrett, objecting that the Biden administration "proposes to find virtually unlimited vaccination power, over millions of healthcare workers, in" what he described as a "hodgepodge" of statutes – "in definitional provisions, a saving clause, and a provision regarding long-term care facilities' sanitation procedures."

National Federation of Independent Business v. Department of Labor/Ohio v. Department of Labor (SCOTUS: decided 1/13/22)

Issue: In November 2021, the Occupational Safety and Health Administration (OSHA) issued a vaccine-or-test mandate requiring all employers with 100 or more employees – roughly two-thirds of the private sector – to compel those employees to either be fully vaccinated against COVID-19 or to be tested weekly and wear masks at work. The government expected the mandate to cover 84 million workers. Businesses, states, and nonprofits challenged the mandate.

Judgment/Holding: In a 6-3 *per curiam* decision, the Court granted the application to stay the rule. Justices Breyer, Sotomayor, and Kagan filed a dissenting opinion.

Denezpi v. United States (SCOTUS: decided 6/13/22)

Issue: Merle Denezpi, a citizen of the Navajo Nation, was arrested for violent sexual offenses committed on the Ute Mountain Ute Indian Reservation against V.Y., also a citizen of the Navajo Nation. Denezpi was initially charged with two violations of the Code of Federal Regulations and one violation of the Ute Mountain Ute Tribal Code in the Court of Indian Offenses for the Ute Mountain Ute Agency. He was sentenced to 140 days in jail, time he had already served, pursuant to an *Alford* plea in connection with the tribal-code offense of assault and battery. Six months later, a federal court indicted Denezpi for a violation of a federal criminal statute pursuant to the same incident; he was ultimately convicted and sentenced to serve 30 years in prison. Denezpi asserted that the subsequent federal prosecution violated his right to be free from double jeopardy.

Judgment/Holding: In a 6-3 opinion by Justice Barrett, the Court held that the Double Jeopardy Clause does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign prosecutes them.

Oklahoma v. Castro-Huerta (SCOTUS: decided 6/29/22)

Issue: In 2020, the Supreme Court ruled in *McGirt v. Oklahoma* that for purposes of the *Major Crimes Act*, land throughout much of eastern Oklahoma reserved for the Muscogee (Creek) Nation since the 19th century remains a Native American territory. By extension, the state of Oklahoma cannot prosecute people accused of crimes involving Native Americans on reservations, regardless of whether the accused is Native American or not. In this case, the issue is the narrower question of whether the *General Crimes Act* prohibits Oklahoma's prosecution of non-Native Americans who commit crimes against Native Americans on Native American reservations.

Judgment/Holding: In a 5-4 opinion authored by Justice Kavanaugh, the Court ruled that the Federal

Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Native Americans against Native Americans on Native American reservations. Justice Gorsuch wrote a dissent, joined by Justices Breyer, Sotomayor, and Kagan. In his dissent, Justice Gorsuch wrote: "Oklahoma's courts exercised the fortitude to stand athwart their own State's lawless disregard of the Cherokee's sovereignty. Now, at the bidding of Oklahoma's executive branch, this Court unravels those lower-court decisions, defies Congress's statutes requiring tribal consent, offers its own consent in place of the Tribe's, and allows Oklahoma to intrude on a feature of tribal sovereignty recognized since the founding. One can only hope the political branches and future courts will do their duty to honor this Nation's promises even as we have failed today to do our own."

Ysleta del Sur Pueblo v. Texas (SCOTUS: decided 6/15/22)

Issue: At issue in this case is whether two of the Native American tribes whose reservations are within Texas's borders are subject to Texas's authority when it comes to gambling regulation, pursuant to the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act, the act's legislative history and the Supreme Court's holding in *California v. Cabazon Band of Mission Indians*. Specifically, the question is whether the tribes have sovereign authority to regulate non-prohibited gaming activities on its lands (including bingo).

Judgment/Holding: In a 5-4 opinion by Justice Gorsuch, the Court found that the Ysleta del Sur and Alabama and Coushatta Indian Tribes of Texas Restoration Act bans as a matter of federal law on tribal lands only those gaming activities also banned in Texas.

United States v. Vaello-Madero (SCOTUS: decided 4/21/22)

Issue: Supplemental Security Income (SSI) is a safety-net program that provides cash assistance to people who are age 65 or older, people who are blind, or people with certain medical conditions, who meet certain income requirements. Congress excluded residents of Puerto Rico and three other territories from the program. Jose Luis Vaello-Madero, a U.S. citizen who lives in Puerto Rico, filed suit arguing that this exclusion violates the Constitution's guarantee of equal treatment for all.

Judgment/Holding: In an 8-1 opinion by Justice Kavanaugh, the Court held that the Constitution does not require Congress to extend Supplemental Security Income benefits to residents of Puerto Rico. Justice Sotomayor filed a dissenting opinion, noting that ""In my view, there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others. To hold otherwise, as the Court does, is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution."

In the Courts:

ADL'S LEGAL DOCKET 2019-22

June 29, 2022

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DECISION KEY

- ▲ Favorable to ADL
- ▼ Contrary to ADL
- ◻ Decision on other grounds
- ⇅ Favorable and contrary portions of the decision
- ○ Settled
- 〓 Removed from court calendar

THE U.S. SUPREME COURT

Pending in the U.S. Supreme Court

Immigration

Asylum

Biden v. Texas
(U.S. Supreme Court, 2022)

Under the Trump Administration's "Remain in Mexico" policy, also known as the Migrant Protection Protocols (MPP), most asylum seekers arriving at the U.S./Mexico border were forced to return to Mexico to await their U.S. asylum hearing. The Biden Administration attempted to terminate the program. Texas and Missouri sued to stop termination of the program. The district court entered a nationwide permanent injunction requiring the Department of Homeland Security to reinstate and maintain MPP; the 5th Circuit affirmed. ADL joined 60 other civil rights, immigration advocacy, and service provider organizations in an *amicus* brief to the Supreme Court led by RAICES and Justice Action Center highlighting the inhumane impacts of this policy. The brief argues that the Fifth Circuit misconstrued the claim being brought in order to reach its own desired conclusion, that it ignored precedent regarding procedural law, and that it invented its own procedural standard. The brief further argues that MPP harms children and separates families, enables human trafficking, heightens risks to the most vulnerable migrants, endangers Black migrants, disadvantages Indigenous language speakers, and impedes fair hearings. Throughout, the brief highlights the stories of people who have been affected by MPP and the effects that this policy has had on people at the border.

Civil Liability for Sponsors of Terrorism

Weiss v. National Westminster Bank PLC
(cert. pending, U.S. Supreme Court, 2021)

In this case brought by families of dozens of American victims of Hamas terrorist attacks, the U.S. Court of Appeals granted summary judgment in favor of a British-based bank that provides banking services to a company, Interpal, that has been designated as a "Specially Designated Global Terrorist" (SDGT) by the U.S. Treasury Department. The issue is whether a bank that is "generally aware" of Interpal's connection to Hamas can be held liable under U.S. anti-terrorism laws for aiding and abetting terrorist activity. The coalition brief ADL joined asks the Supreme Court to grant certiorari and allow the families to amend their complaint so that a jury can consider the bank's potential liability.

Decided by the U.S. Supreme Court

Discrimination

Free Exercise Clause

Kennedy v. Bremerton School District
(U.S. Supreme Court, 2022)

This case involves 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 lower courts repeatedly ruled in favor of the school district. ADL joined 33 religious organizations, religious denominations, and local clergy in an amicus brief in support of the school district. The brief argues that allowing the football coach to lead the team in prayers at football games undermines the freedom of conscience of student athletes — who may wish to refrain from joining the prayer but who may feel overwhelming pressure to please their coach. It also argues that those student athletes who are able to resist the coach's pressure are at increased risk of harassment and bullying, from both students and teachers. Moreover, religious minorities are likely to bear the brunt of that bullying, which causes short-term and long-term harms.

Reproductive Rights

Due Process

Dobbs v. Jackson Women's Health Organization
(U.S. Supreme Court, 2021)

Mississippi passed a law in 2018 that bars abortions after the 15th week of pregnancy, with limited exceptions. 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 focuses on due process and explains that the devastating impact of allowing a pre-viability abortion ban to stand — or overturning the right to abortion entirely — will deny the liberty and equality of people who can become pregnant. The brief emphasizes how gutting or overturning the right to abortion would undermine the bodily autonomy of people forced to carry a pregnancy to term; limit the ability of people who can become pregnant to participate equally in social and economic life; and make it more difficult to navigate life's course free from sex stereotypes regarding the capabilities and expected social roles of women. It highlights how such abortion bans especially harm people with disabilities, those living in poverty, LGBTQ+ people, and people of color. The brief also responds to Mississippi's argument that the advances in contraceptive access and the existence of gender equality policies obviates the need for the right to abortion.

Free Exercise

Carson v. Makin
(U.S. Supreme Court, 2021)

At issue in this case is a free exercise challenge to a Maine secondary school tuition assistance program. To provide for high school education in over half of the State's school districts that do not have public secondary schools, Maine pays for students to attend public or private schools which provide secular education, including religiously affiliated schools that do not indoctrinate religion. The lawsuit was brought by parents seeking to send their children to religious schools. ADL joined a legal brief asserting that the history of the Free Exercise Clause reflects it does not require states to fund religious education. To do so, would be an unwarranted and substantial expansion of the Free Exercise Clause contrary to the Court's existing precedent.

Civil Liberties

NetChoice v. Paxton
(U.S. Supreme Court, 2022)

This case involves a challenge to a Texas law that that seeks to stop social media censorship and would effectively eviscerate the ability of major platforms to engage in meaningful content moderation. ADL joined a coalition amicus brief urging the Supreme Court to prevent the law from going into effect, arguing that the law "decimates platforms' efforts to effectively and usefully curate content" and "forces disgraceful and wasteful speech onto platform users." For example, platforms "could not moderate pro-Nazi speech — that is unless they also moderated all content pertaining to political ideologies. They could not moderate speech denying the Holocaust — at least not without banning all content remembering or educating about the Holocaust. They could not remove speech glorifying terrorist attacks against the United States — unless they also remove speech decrying, memorializing, or educating about terrorist attacks against the United States." As the brief observes, by broadly rejecting "censorship," this law would render platforms "powerless to stop their private spaces from being used as breeding grounds for radicalization and recruiting of those who will engage in the most terrifying and destructive of acts."

Church-State Separation

Shurtleff v. City of Boston
(U.S. Supreme Court, 2021)

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 filed an *amicus* brief with the U.S. Supreme Court, highlighting that the consequence of a finding that Boston's City Hall flagpoles are a public forum would be that

anyone could express any viewpoint from them, subject only to reasonable time, place, and manner restrictions. Such a decision would have serious, real world ramifications precisely because flying a flag from a government flagpole is prototypical government speech. Finding a free speech right for any member of the public to fly any flag on Boston's City Hall flagpoles would give private speakers the ability to falsely present their own message as government approved.

Immigration

Asylum

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Pekoske/Wolf v. Innovation Law Lab
(U.S. Supreme Court, 2021)

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.

Voting Rights

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Brnovich v. Democratic National Committee/Arizona Republican Party v. Democratic National Committee
(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.

Free Speech

Mahanoy Area School District v. B.L.
(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.

Free Exercise Clause

Establishment Clause

Fulton v. City of Philadelphia
(U.S. Supreme Court, 2021)

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.

Free Exercise Clause

South Bay United Pentecostal Church v. Newsom
(U.S. Supreme Court, 2021)

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.

Free Exercise Clause

COVID-19

Harvest Rock Church, Inc. v. Newsom
(U.S. Supreme Court, 2021)

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.

Free Exercise Clause

COVID-19

Gish v. Newsom
(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.

Reproductive Rights

Establishment Clause

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

Church-State Separation

Discrimination

St. James School v. Biel
(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.

Church-State Separation

Establishment Clause

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Espinoza v. Montana Department of Revenue
(U.S. Supreme Court, 2019)

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

Civil Liberties

Reproductive Rights

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June Medical Services v. Gee
(U.S. Supreme Court, 2019)

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

Immigration

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Department of Homeland Security v. Regents of the University of CA; Donald J. Trump, President of the U.S. v. National Association for the Advancement of Colored People; McAleenan, Acting Sec. of Homeland Security v. Vidal
(U.S. Supreme Court, 2019)

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.

Discrimination

Civil Liberties

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

(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.

Discrimination

LGBTQ+ Rights

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

(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.

Civil Liberties

Voting Rights

Rucho v. Common Cause / Lamone v. Benisek
(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

Discrimination

Equal Protection

Carolina Youth Action Project v. Wilson
(U.S.C.A. 4th Circuit, 2022)

South Carolina's "disturbing schools" and "disorderly conduct" laws are vague, punitive, and intensely subjective laws that have been vehicles for channeling students — disproportionately BIPOC students and students with disabilities — into the criminal legal system. Plaintiffs are public-school students in South Carolina challenging these laws. ADL joined 23 other civil rights and public interest organizations in an amicus brief led by the National Women's Law Center, the NAACP, the National Disability Rights Network, and the National Center for Youth Law, to the U.S. Court of Appeals for the Fourth Circuit supporting the students and highlighting the discriminatory impact of vague school discipline laws and school policing, particularly on Black students including Black girls, who make up the core of the plaintiffs. The brief also discusses the ways in which these harms caused by interactions with law enforcement are exacerbated for other students of color, students with disabilities, LGBTQ+ students, and students at the intersection of these identities.

Discrimination

Transgender Rights

Adams v. School Board of St. John's County
(U.S.C.A. 11th Circuit, 2021)

This case involves 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 and 50 other organizations joined an *amicus* brief led by the National Women's Law Center opposing this policy. ADL had joined a previous brief in this case in 2019, resulting in a favorable decision from an 11th Circuit panel. In an en banc hearing, the full 11th Circuit is revisiting the opinion. The brief explains why the court's initial decision was correct and describes the harms that would flow from a bad decision. It also debunks the myths and stereotypes that the school's arguments rely on.

Discrimination

Transgender Rights

Soule v. CIAC
(U.S.C.A. 2nd Circuit, 2021)

The Connecticut Interscholastic Athletic Conference (CIAC) has a policy that allows K-12 athletes to participate in sports consistent with their gender identity. This inclusive policy and others like it help protect the safety and wellbeing of transgender youth, and help ensure that all women and girls can access the well-documented benefits of playing sports. In an amicus brief led by the National Women's Law Center, ADL joined 34 other organizations in supporting CIAC against this lawsuit challenging its inclusive athletic policy and urging the court to affirm the lower court ruling dismissing the case. Among other things, the brief refutes the inaccurate and dangerous myths and stereotypes that undergird the challenge to the CIAC policy. It also explains that denying students an opportunity to participate in sports consistent with their gender identity is unlawful sex discrimination under Title IX.

Church-State Separation

Discrimination

Crisitello v. St. Theresa School
(Supreme Court of New Jersey, 2021)

At issue in this case is the application of the First Amendment's ministerial employee exception to an art teacher at a religious elementary school. Grounded in constitutionally mandated separation of church and state, the exception exempts religious institutions from all employment discrimination laws for employees deemed to be ministerial. A lower state court ruled that the teacher, who performed no "vital religious duties," could move forward with her pregnancy and marital discrimination lawsuit against the school because the exception did not apply to her. ADL joined a brief drafted by Americans United for Separation of Church and State and the National Women's Law Center in support of the teacher asserting that acceptance of the school's excessively broad interpretation of the exception would have far-reaching consequences for employees of the numerous religious schools and other institutions in the State of New Jersey. It would deprive such employees of workplace anti-discrimination protections by permitting religious institutions to unilaterally determine when the exception applies without consideration of an employee's actual duties.

Discrimination

LGBTQ+ Rights

Corbit v. Taylor
(U.S.C.A. 11th Circuit, 2021)

Alabama only allows people to change the gender marker on their driver's licenses if they undergo surgical procedures and submit proof to the state,

meaning that transgender people who do not want, cannot afford, or are medically unable to have the required surgeries are prevented from having a license that accurately reflects their gender. Carrying a license with an inaccurate gender marker puts transgender people — especially Black and brown transgender women — at a heightened risk of discrimination, harassment, and attack. Three transgender women who were denied accurate gender markers on their driver's licenses sued the state of Alabama, arguing that this policy violates their constitutional privacy, due process, free speech, and equal protection rights. The district court decided that Alabama's policy violates the Equal Protection clause because it discriminates against transgender people on the basis of sex. ADL joined 32 organizations in an amicus brief led by the National Women's Law Center supporting the women on appeal in the Eleventh Circuit. The brief urges the court to affirm the district court's decision, highlights the harms at stake — especially for Black and brown transgender women — and clarifies some issues that the state conflates in its appeal.

Free Exercise

Discrimination

Carpenter v. James
(U.S.C.A. 2nd Circuit 2022; U.S.D.C. Western District of New York, 2021)

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 required by the Free Exercise Clause. Furthermore, New York's public accommodations law does not coerce participation in religious activity. Finally, antidiscrimination laws protect religious freedom, including that of adherents of underrepresented faiths who could be discriminated against if this exemption is granted.

Decided by the Federal and State Courts

Discrimination

O C Food & Beverage, LLC v. Orange County, Florida
Fifth District Court of Appeal, Florida, 2021

The Orange County, Florida Human Rights Ordinance provides broader anti-discrimination protections than the State's Human Rights Law, including prohibitions on sexual orientation and gender identity discrimination. At issue in this case is whether the State law preempts these broader protections. ADL joined a brief asserting that the Florida Constitution and long-standing State Supreme Court rulings permit county and municipal governments to adopt more comprehensive anti-discrimination laws. Furthermore, the Orange County and numerous other local ordinances protect vulnerable Floridians, not covered under the State law, from discrimination in employment, housing, and public accommodations, which continues to be a serious issue in the State.

Equal Protection

Sixth Amend-ment Right

Commonwealth of Massachusetts v. Jacobson
(Massachusetts Superior Court, 2022)

This case seeks to cure a decades-old injustice arising from a criminal trial in the early 1980s that was tainted by antisemitism. In ADL's letter *amicus* brief supporting defendant Barry Jacobson's motion for post-conviction relief, ADL explained how one of the most prominent and persistent stereotypes about Jews is that they "are greedy and avaricious, hoping to make themselves rich by any means possible." ADL argued that the prosecution's suggestion at trial that these traits where inherent in Mr. Jacobson was not only improper, but fed directly into the preexisting antisemitic prejudices held by at least one of the jurors, whose comments ("All those rich, New York Jews come up here and think they can do anything and get away with it") revealed that she believed Mr. Jacobson had these characteristics because he was Jewish, and was guilty for this reason alone. ADL's letter *amicus* highlighted the ways in which this was quintessential juror bias — and directly contrary to a "basic premise of our criminal justice system" that the "law punishes people for what they do, not who they are."

First Amendment

Establishment Clause

Demkovich v. Saint Andrew the Apostle Parish
(U.S.C.A. 7th Circuit, en banc, 2021)

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.

Bullying

LGBTQ+ Rights

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Doe v. Hopkinton Public Schools
(U.S.C.A. 1st Circuit, 2021)

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.

Free Exercise

COVID-19

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Resurrection School v. Hertel
(U.S.C.A. 6th Circuit, 2021)

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.

Discrimination

Morgan, et al. v. United States Soccer Federation, Inc.
(U.S.C.A. 9th Circuit, 2021)

In March 2019, the United States Senior Women's National Soccer Team (USWNT) filed a class action lawsuit against the United States Soccer Federation, Inc. (USSF), claiming violations of the Equal Pay Act and of Title VII of the Civil Rights Act of 1964 alleging unequal pay and working conditions as compared to the Men's National Team (USMNT) in the District Court of Central California. For years, the U.S. Soccer Federation had been paying USWNT players less than their counterparts on the USMNT, despite the women's soccer team being more successful and bringing in substantially more money than the men's soccer team. Upon a summary judgment motion, the District Court granted partial summary judgment in favor of the women's team for the unequal working conditions claim, but granted summary judgment in favor of USSF for the unequal pay claim. ADL joined 63 civil rights organizations in a brief led by the National Women's Law Center and Women's Sports Foundation supporting the women's national team. The brief highlights the harms of the gender wage gap. It also underscores the importance of following the applicable legal standards for claims of equal pay for women, notably the Equal Pay Act and Title VII, and argues that the District Court failed to do so properly in this case.

Education

COVID-19

Boston Parent Coalition for Academic Excellence Corp. v. School Committee of the City of Boston
(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.

LGBTQ+ Rights

Establishment Clause

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

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.

Discrimination

Oracle America, Inc. v. U.S. Dept. of Labor
(U.S. District Court for the District of Columbia, 2020)

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

Free Exercise Clause

Establishment Clause

Antietam Battlefield KOA v. Hogan
(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.

Discrimination

Students for Fair Admissions, Inc. v. President and Fellows of Harvard
(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.

Free Exercise Clause

COVID-19

High Plains Harvest Church v. Polis
(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 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.

Free Exercise Clause

COVID-19

Andrew Wommack Ministries, Inc. v. Polis
(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 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.

Free Exercise Clause

Establishment Clause

Kennedy v. Bremerton School District
(U.S.C.A. 9th Circuit, 2020)

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.

Voting Rights

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.

Free Exercise Clause

COVID-19

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

New Hope Family Services, Inc. v. Poole
(U.S.C.A. 2nd Circuit, 2019)

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.

Immigration

Discrimination

Patrick Saget v. Donald J. Trump
(U.S.C.A. 2nd Circuit, 2019)

This case involves a challenge to the Trump administration's termination of temporary protected status (TPS) for approximately 50,000 Haitians and their 27,000 U.S. citizen children. TPS is a form of humanitarian immigration relief that allows individuals from designated countries to live and work legally in the U.S. if they cannot return safely to their country of origin due to armed conflict, natural disaster or other extraordinary circumstances. Most TPS recipients came to the U.S. at a young age, lived here most of their lives, and have strong ties to this country. This suit alleges violations of the law and the Constitution by Trump administration officials seeking to operationalize the President's racial animus towards Haitians. ADL filed an amicus brief in this case in support of the preliminary injunction blocking the Trump administration decision to terminate TPS for Haiti issued by Second Circuit Judge William F. Kuntz. ADL's brief explains that while there is no constitutional protection requiring the U.S.

to afford temporary protected status, there is a clear Constitutional prohibition on discrimination in the implementation of government policies based on race, national origin, and other protected characteristics, and that ample evidence of racial animus by the Administration exists in this case. The brief catalogues numerous problematic statements by President Trump and highlights the pernicious history of the "America First" slogan and other seemingly innocuous government messages and strategies. As an organization with vast experience responding to all forms of discrimination and hate, ADL recognizes the anti-immigrant nature of the TPS terminations and the need for context and analysis to be provided to the court. ADL also filed a brief in *Ramos v Nielsen*, a Ninth Circuit case regarding the Administration's termination of TPS for individuals from El Salvador, Haiti, Nicaragua, and Sudan.

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.

Discrimination

Church-State Separation

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

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.

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.

Immigration

La Clínica de la Raza v. Trump
(Northern District of California, 2019);
State of California v. Dept. of Homeland Security
(Northern District of California, 2019);
State of New York v. Dept. of Homeland Security
(Southern District of New York, 2019);
Make the Road New York v. Cuccinelli
(Southern District of New York, 2019)

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

impacts specific immigrant populations such as immigrant communities of color and is motivated at least in part by racial animus.

Discrimination

Halprin v. Davis
(Northern District of Texas, 2019)

This case involves an appeal for a new trial for Petitioner Randy Halprin, one of six individuals convicted of capital murder and sentenced to death for the murder of Irving, Texas police officer Aubrey Hawkins. The appeal notes that former state District Judge Vickers Cunningham was deeply prejudiced against Mr. Halprin because he is Jewish. ADL filed an amicus brief in support of Mr. Halprin's Petition for Writ of Habeas Corpus in the United States District Court Northern District of Texas, Dallas Division. ADL's amicus brief provides historical context for the blatantly 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.

Discrimination

LGBTQ+ Rights

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

This case involves the Equal Protection Clause and Title IX challenges to a county school board policy that prohibits transgender students from using the restroom which conforms to their gender identity. ADL joined a brief filed by the National Women's Law Center opposing this policy. The brief focuses on the claim under Title IX, a federal law which prohibits discrimination on the basis of sex at publicly funded educational institutions. The brief asserts that the law's protections encompass gender identity, and thus policies or rules governing schools may not turn on one's sex as assigned at birth. Furthermore, the protective concerns raised by the school board in support of the policy are invalid because they are based on discriminatory stereotypes, which have been rejected by the U.S. Supreme Court in other contexts.

Immigration

Discrimination

Ramos v. Nielsen
(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.

Immigration

Federalism

New York v. U.S. Immigration and Customs Enforcement
(Southern District of New York, 2019)

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

Immigration

Federalism

HIAS v. Trump
(U.S. District Court, District of Maryland, 2019)

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

Church-State Separation

Civil Liberties

Mayor and City Council of Baltimore v. Alex M. Azar II (District of Maryland, 2019); *City and County of San Francisco v. Alex M. Azar II* (Northern District of California, 2019)

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

Civil Liberties

Discrimination

North Carolina v. Bennett; North Carolina v. Hobbs (North Carolina Supreme Court, 2019)

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

Discrimination

LGBTQ+ Rights

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

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.

Civil Liberties

Sex Discrimination

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

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 devasting 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.

Church-State Separation

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.

Civil Liberties

Immigration

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.

Church-State Separation

Discrimination

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.

Church-State Separation

Establishment Clause

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

At issue in this case is the constitutionality of a decision by the City of Boston to reject a request by some residents to raise the Christian flag in front of City Hall, next to the American flag and the Massachusetts state flag. ADL joined an amicus brief filed by a diverse group of religious and civil rights organizations urging the First Circuit to affirm the District Court's ruling in favor of the City. In addition to explaining why the raising of the Christian flag outside of City Hall would violate the Establishment Clause, the brief provides an in-depth discussion on how and why the drafters of the First Amendment effected a separation of government and religion as the means to ensure enduring religious freedom which—in light of our nation becoming increasingly pluralistic--is more crucial than ever.

Church-State Separation

Establishment Clause

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

At issue in this case is the constitutionality of a Pennsylvania House of Representatives policy barring nontheists from serving as guest chaplains to offer the Chamber's daily innovation. 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.


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