



**IN THE COURTS:  
ADL'S CURRENT LEGAL DOCKET  
JULY 2015**

**CIVIL RIGHTS DIVISION ■ LEGAL AFFAIRS DEPARTMENT**

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

# THE U.S. SUPREME COURT

## 2014-2015 DECISIONS FROM THE U.S. SUPREME COURT

Discrimination  
Marriage equality

[\*Obergefell v. Hodges\*](#) (U.S. Supreme Court, 2015)

*Tanco v. Haslam* (U.S. Supreme Court, 2015)

*DeBoer v. Snyder* (U.S. Supreme Court, 2015)

*Bourke v. Beshear* (U.S. Supreme Court, 2015)

▲ These cases challenge Ohio's, Tennessee's, Michigan's, and Kentucky's Marriage Bans, state constitutional amendments that define marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations that recounts how discriminatory laws targeting disadvantaged groups have long been justified by religious and moral disapproval, an argument that has been rejected by the U.S. Supreme Court. The brief also argued that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves. The Court held that the 14th Amendment requires a state to license a marriage between two people of the same sex and to recognize marriages lawfully performed in other jurisdictions.

Discrimination  
Housing

[\*Texas Department of Housing and Community Affairs v. The Inclusive Communities Project\*](#) (U.S. Supreme Court, 2014)

▲ The case focuses on Dallas, Texas, where the State of Texas approved the construction of affordable housing along racial lines. Over a period of years, a Texas housing agency reinforced residential segregation by consistently approving affordable housing in African American neighborhoods instead of fairly distributing that housing across all communities to promote integration. The U.S. Supreme Court reviewed a key provision of the Fair Housing Act. Enacted in the wake of Rev. Martin Luther King Jr.'s tragic assassination in 1968, the Fair Housing Act is our nation's key tool to eradicate housing discrimination and promote more inclusive neighborhoods. The Texas Department of Housing and Community Affairs v. The Inclusive Communities Project case raises the question whether the Fair Housing Act prohibits not just intentional bigotry but also unjustified practices that disproportionately exclude or harm people based on race, ethnicity, religion, family status, or other characteristics covered by the Act. This principle, known as the "disparate impact" standard, has been the law of the land for over four decades. In fact, the U.S. Department of Housing and Urban Development (HUD) issued regulations that again confirm this approach. ADL joined an amicus brief filed on behalf of a coalition of organizations. The brief provided evidence (based in caselaw and social science) supporting the arguments that segregation continues to generate grave social harms; that conversely, integration conveys benefits that accrue both to individuals and to society as a whole; and that disparate impact claims are a fundamental tool in making progress toward integration. The Court held that the Act protects victims of discrimination, even where they cannot prove an intent to discriminate.

Discrimination  
Passport  
Designation



**Zivotofsky v. Kerry (U.S. Supreme Court, 2014)**

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

Discrimination  
Religious  
Accommodation



**EEOC v. Abercrombie & Fitch Stores, Inc. (U.S. Supreme Court, 2014)**

At issue in this case is whether or not employees must be the ones to broach the topic of religious accommodations in the workplace, even if it an obvious accommodation. The plaintiff in this case, a Muslim woman who wore a headscarf/hijab, applied for a sales position at Abercrombie & Fitch. During the interview, there was no discussion about if or how the applicant’s hijab would be acceptable under the store's "Look Policy." Although the plaintiff scored high enough to be hired, Abercrombie reduced the score and failed to hire her. ADL’s brief emphasized the importance of Title VII's protection against religious discrimination, explained how the Tenth Circuit's rule undermines both Title VII's central purpose and its central "bilateral cooperation" mechanism, and urged the Court to take care not to endorse customer preference as a component when considering undue hardship.

Civil Liberties  
First Amendment



**Elonis v. United States (U.S. Supreme Court, 2014)**

At issue in this case is the standard for determining when a statement crosses the line from protected speech to a "true threat." The defendant in the case posted threatening statements on Facebook, including one about wanting to kill his estranged wife and dump her body in a creek to make it look like a rape. He later said that he did not mean the statements as a threat, but rather as a rant. ADL's brief argued that true threats should be unlawful, regardless of whether the State can prove that the speaker intended the statements as a threat.

Civil Liberties  
Voting Rights



**Alabama Democratic Conference v. Alabama (U.S. Supreme Court, 2014)**

At issue in this case was Alabama’s redistricting plan after the 2010 census. When Alabama redrew its district lines the drafters created supermajorities in majority-

minority districts, sometimes creating districts that were more than 75 percent black. The Alabama Democratic Conference and the Alabama Legislative Black Caucus filed lawsuits arguing that, in drawing the district lines the way it did, Alabama unconstitutionally engaged in racial gerrymandering and diluted minorities' political power in other districts. ADL urged the Supreme Court to strike down the redistricting plan as unconstitutional, arguing that because the State subordinated traditional race-neutral redistricting principles to race-based considerations, the Court should analyze the redistricting plan with the highest level of scrutiny. ADL argued that Alabama's plan should be struck down because it was not narrowly tailored to fit the requirements of the Voting Rights Act.

**Holt v. Hobbs (U.S. Supreme Court, 2014)**

Religious Freedom  
RLUIPA



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

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

# THE APPELLATE AND STATE COURTS

## 2014-2015 DECISIONS FROM APPELLATE AND STATE COURTS

Discrimination  
Marriage equality

[post Obergefell]



### [DeLeon v. Perry](#) (U.S.C.A. 5th Circuit, 2014)

This case challenges Texas' Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves..

Discrimination  
Marriage equality

[post Obergefell]



### [Conde v. Rius-Armendariz](#) (U.S.C.A. 1st Circuit, 2015)

This case challenges Puerto Rico's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination  
Marriage equality

[post Obergefell]



### [Brenner v. Armstrong](#) (U.S.C.A. 11th Circuit, 2014)

This case challenges Florida's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Religious Freedom  
Discrimination

**SETTLED**

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

Discrimination  
Marriage equality



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

This case challenges Ohio's Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf

of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination  
Marriage equality



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

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

Discrimination  
Marriage equality



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

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

Discrimination  
Marriage equality



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

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

Discrimination  
Marriage equality



**[Sevcik v. Sandoval and Jackson v. Abercrombie](#) (U.S.C.A. 9th Circuit, 2013)**

The Nevada case, *Sevcik v. Sandoval*, was brought by four same-sex couples who sought marriage licenses in Nevada and four more couples who had been married in California and Canada and sought recognition of those marriages in Nevada. The Hawaii case, *Jackson v. Abercrombie*, contested the constitutionality of both the state’s ban on same-sex marriage and its recognition of civil unions only. The two cases were combined into a single appeal. ADL filed a brief on behalf of a coalition of 29 organizations arguing that overturning the marriage bans not only would ensure that religious considerations do not improperly influence what marriages the two states can recognize but also would allow religious groups to decide the definition of marriage for themselves.

Hate Crimes  
Religious  
Freedom



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

The Defendants in this case challenged the constitutionality of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). The Anti-Defamation League filed an amicus brief on behalf of 40 nationally-prominent civil rights, human rights, religious, educational, and law enforcement organizations urging the U.S. Court of Appeals for

the Sixth Circuit to uphold the constitutionality of the Hate Crimes Prevention Act and to affirm that it applies to cases in which the religiously-motivated violence involves victims and perpetrators who share the same faith. The brief was the first coalition brief filed in any challenge to the constitutionality of the HCPA.

Discrimination  
Marriage equality



**[Wolf v. Walker](#) (U.S.C.A. 7th Circuit, 2014)**

This case challenged Wisconsin’s Marriage Ban, a state law that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination  
Marriage equality



**[Baskin v. Bogan](#) (U.S.C.A. 7th Circuit, 2014)**

This case challenged Indiana’s Marriage Ban, a state law that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 25 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Church-State  
Separation/  
Discrimination  
Establishment  
Clause



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

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

Discrimination  
Marriage equality



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

This case challenged Virginia’s Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 20 organizations arguing that overturning the marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination  
Marriage equality



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

This case challenged Utah’s Marriage Ban, a state constitutional amendment that defined marriage as exclusively between one man and one woman. ADL filed a brief on behalf of a coalition of 26 organizations arguing that overturning the marriage ban would not

only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

Discrimination  
Marriage equality



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

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

**FILED AND AWAITING DECISION  
IN APPELLATE AND STATE COURTS**

Civil Liberties  
First Amendment

**[Commonwealth v. Michael Walters](#)** (Massachusetts Supreme Judicial Court, 2015)  
At issue in this case is whether a person violates the Massachusetts stalking statute by posting threatening comments or photographs on social media. ADL’s brief argues that true threats—whether online or in person—fall outside First Amendment protections. The brief further argues that, in the Internet age, threats online can be just as damaging as threats issued face-to-face, and that a defendant need not necessarily specifically draw the victim’s attention to threatening posts online for them to be unlawful.

Discrimination  
Public  
Accommodation

**[Masterpiece Cakeshop v. Craig](#)** (Colorado Court of Appeals, 2015)  
The complainants in this case, a gay couple, were denied the opportunity to order a cake for their wedding reception by a Denver-area bakery with a policy and history of refusing to sell baked goods for occasions celebrating same-sex relationships. The Colorado Civil Rights Division held that this constituted sexual orientation discrimination in violation of the Colorado Anti-Discrimination Act. The Colorado Civil Rights Commission upheld this finding and ordered the Cakeshop to change its policy and take various steps to communicate the change.

The Cakeshop and its owner have appealed the Commission’s ruling to the Colorado Court of Appeals. In their opening brief, Appellants argue that enforcing the nondiscrimination law against them is unconstitutional under the Free Exercise Clause and the compelled speech doctrine. ADL submitted a brief urging the court to affirm the Commission’s decision and reject arguments that religious or moral disapproval is a legitimate basis for discrimination against minority groups.

Church-State  
Separation  
Government  
funding

**[Hart v. North Carolina](#)** (Supreme Court of North Carolina, 2015)  
**[Richardson v. North Carolina](#)** (Supreme Court of North Carolina, 2015)  
At issue in these cases is the constitutionality of a North Carolina school vouchers program called the Opportunity Scholarship Program. Although secular and religious private schools are eligible to receive vouchers under the program, close to three quarters of participating schools are religious. As a result, the program effectively diverts millions of public-education-fund dollars to religious schools, many of which infuse religion into their curricula; discriminate in admissions and employment on the basis of religion, disability and other grounds; and are subject to minimal academic standards. ADL joined an amicus brief arguing that the North Carolina Supreme Court should affirm a lower court decision, which ruled that the program did not serve a public purpose in violation of the North Carolina State Constitution.

Hate Crimes  
Jury Instructions

**[Commonwealth v. Kelly, Bratlie & Shdeed](#)** (Massachusetts Supreme Judicial Court, 2014)  
This case challenges a judge’s jury instructions pursuant to a prosecution under the Massachusetts Hate Crimes Penalties Act, where the judge instructed the jury to

determine if the defendants acted intentionally and deliberately in assaulting the victim because of his race but didn't instruct that the defendants' bias motive also be a "predominant" or "substantial" reason for the assault. ADL's brief urges the Court to uphold the judge's jury instructions and not insert a "predominant" or "substantial" factor test which would weaken protections for hate crimes victims and communities across the Commonwealth.

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

Church-State  
Separation  
Government  
funding

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

**[Arce v. Huppenthal](#) (U.S.C.A. 9th Circuit, 2013)**

Discrimination  
Education

At issue in this case is Arizona law HB 2281, which bars public schools from 1) promoting the overthrow of the government; 2) promoting resentment towards a race or class of people; 3) designing programs primarily for students of a particular ethnic group; and 4) advocating ethnic solidarity instead of the treatment of pupils as individuals. The legislative history of the bill makes clear that its intent was to dismantle the Tucson Unified School District's Mexican-American Studies program (MAS), despite the program's success in closing the educational achievement gap for Latino students. After passage of the law, the State Superintendent ordered the school district to dismantle the MAS program. MAS staff and students filed suit. ADL joined a brief written by the Chief Earl Warren Institute for Law and Social Policy, which argues that the lower court erred in failing to consider fully how the law violates equal protection guarantees.

## **INDEX OF CASES FILED/DECIDED IN 2014-2015**

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