



2020 JRCLS National Conference
Now Trending: Religious Liberty at the United States Supreme Court
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Espinoza v. Montana Board of Review

- Free Exercise follow-along to *Trinity Lutheran*
- History & prevalence of Blaine Amendments
- Key issues:
 - Does *Trinity Lutheran* rule against religious exclusion extend to public funding for religious schools.
 - “Status” v. “Use”: Is funding for religious schools “religious use” or is exclusion based on “religious status?”
 - Religious animus: Can or should Blaine Amendments be invalidated based on history of religious animus?
 - Leveling down: Can discrimination be cured by eliminating program/benefit entirely?
- Predictions and potential next cases.
 - Justices Roberts and Alito on race; Justice Kavanaugh on leveling down
 - Historic preservation cases (*Morris County*)
 - Standing as a non-factor

Our Lady of Guadalupe v. Morrissey-Berru & St. James School v. Biel

- Religion Clauses follow-along to *Hosanna-Tabor*
- The role of the Ministerial Exception
- Key issues:
 - Is function alone sufficient to trigger the ministerial exception?
 - What is the role of ordination and title?
 - Ninth Circuit test.
- Predictions and potential next cases
 - Argument April 1
 - Justice Breyer at *Espinoza* on the role of religious schools.
 - How far should the ministerial exception extend
 - Consider school group cases; potential impact on *CLS v. Martinez*

Little Sisters of the Poor v. Commonwealth of Pennsylvania

- RFRA follow-along to *Zubik v. Burwell*
- History of the contraception mandate litigation
- Key issues:
 - Standing
 - NPRM Issues



- Tension between RFRA and the Affordable Care Act and APA; which controls?
- Nationwide injunctions!
- Predictions and potential next cases
 - Argument in April
 - End of the Little Sisters' 10-year saga?

Ricks v. Idaho Board of Contractors; Fulton v. City of Pennsylvania

- Challenges to *Employment Division v. Smith*
- *Smith* & its shortcomings
- *Kennedy v. Bremerton School District*: Cracks in *Smith*?
- Key issues:
 - Will the court protect *Lukumi*?
 - Or will the court return to *Sherbert*?
 - Impact on religious adoption
 - Will the Court go beyond *Masterpiece Cakeshop (Arlene's; Sweetcakes)*
- Predictions and potential next cases.
 - What does a post-*Smith* world look like?
 - Where is Justice Breyer? Justice Kagan?

Patterson v. Walgreens

- Challenge to *TWA v. Hardison*
- *Kennedy v. Bremerton School District*: Cracks in *Hardison*?
- Key issues:
 - Impact for “minority” religious believers
- Predictions and potential next cases.

Other Cases with Religious Liberty Impact

- *Bostock v. Clayton County*, No. 17-1618 & *Altitude Express, Inc. v. Zarda*, No. 17-1623 (whether Title VII's bar on sex discrimination applies to sexual orientation)
- *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, No. 18-107 (whether Title VII's bar on sex discrimination applies to transgender discrimination)
- *Tanzin v. Tanvir*, No. 19-71 (whether RFRA authorizes individual capacity damages claims against federal employees)
- *June Medical Services v. Gee*, No. 18-1323 & *Gee v. June Medical Services*, No. 18-1460 (abortionists' challenge to state's hospital admitting privileges requirement, and state's challenge to abortionists' third-party standing to assert rights of patients)
- *USAID v. AOSI*, No. 19-177 (First Amendment constitutionality of a federal rule that foreign grantee affiliates in anti-HIV program have express policy opposing sex trafficking and prostitution)