Understanding the Constitution: Chapter Six

The First Amendment and Religion, Part 1

1. Several Founding Fathers, including Samuel Adams and Thomas Jefferson, argued the Constitution needed to have a Bill of Rights before it was complete. Why did they feel a Bill of Rights was so important?

2. Which Christian denomination in Virginia faced significant persecution prior to the ratification of the Constitution?

What changed to end the persecution of this denomination?

3. How did James Madison define "religion" in his *Memorial and Remonstrance*?

4. What are the two religion clauses contained in the First Amendment? Give their names, and in your own words, what they mean.

5. Where did the phrase “separation of church and state” originate? How did it become such a prominent phrase in American civics? Do you think that phrase reflects the Founders’ original understanding of the relationship between government and religion?

6. Name three actions by government officials in the early days of the United States that support the idea that the Founders did not mean to prevent religious influence in government or the public square.

7. George Washington said, "[L]et us with caution indulge the supposition that morality can be maintained without religion…[R]eason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle." Does the current situation in American culture tend to support or discredit Washington's assessment? Why or why not?

8. When their book was published (2006), the authors believed that the Supreme Court was beginning to treat religious groups more equally when it came to Establishment Clause issues. Read the brief summary of the case *Trinity Lutheran Church of Columbia v. Comer* (2017), included in this week's assignment. Does this recent decision confirm or disprove the authors' belief? Why or why not?

9. The Supreme Court has noted that "the freedom to believe is absolute, the freedom to act is not." Does this statement reflect a Biblical understanding of freedom? Why or why not?

10. The authors point out that having religious exemptions in place for "generally applicable laws" is important for maintaining religious liberty under the Free Exercise Clause. Read this summary of Supreme Court cases in 2020, and give an example where the Court upheld a religious exemption to a general law and where it did not uphold the exemption.

CASE

Trinity Lutheran Church of Columbia v. Comer

Court: U.S. Supreme Court

Status: Won

Last Updated: 7/20/2020

OVERVIEW

Summary

Trinity Lutheran Church is located in Columbia, Missouri. The church operates a preschool called The Learning Center, which has a playground on site for use by students and the community at large. In 2012, Trinity applied for a playground resurfacing grant from the Department of Natural Resources of the State of Missouri. The grant was part of the state's Scrap Tire Program that recycles scrap tire material in an attempt to reduce the amount of tires in landfills. Trinity's playground was surfaced with pea gravel that was hard on the children if they fell, and it kept migrating away from the slides and other play structures. Trinity wanted a grant to resurface its playground with a pour-in-place rubber surface made from recycled tires.

The Department received 44 applications in 2012. It ranked Trinity's application fifth, and it gave out 14 grants that year. But the Department denied a grant to Trinity solely because the preschool was operated by a church, basing its decision on a state constitutional clause that prohibited aid to churches.

Trinity filed suit in 2013, seeking to protect the safety of its students, as well as the community members who use the playground after hours and on weekends. After the Court of Appeals ruled against Trinity, the U.S. Supreme Court agreed to hear the case.

On June 26, 2017, Trinity Lutheran Church won its case at the Supreme Court. The Court ruled 7-2 that the government cannot exclude churches and other faith-based organizations from a secular government program simply because of their religious identity, setting a broad precedent for religious freedom.

In October 2018, children at the Learning Center were finally able to enjoy a new, safe playground surface.

Our role in this case

Alliance Defending Freedom represented Trinity Lutheran Church all the way to the U.S. Supreme Court. We defended the church's freedom to participate equally in neutral government programs and not be discriminated against solely because of the church's religious identity.

Supreme Court Wrap Up: How Did Religious Liberty Do This Term?

By Maureen Collins posted on: July 30, 2020

This past term at the U.S. Supreme Court was interesting to say the least. For the first time ever, oral arguments were conducted over the phone due to COVID-19 precautions. And there was no shortage of important decisions delivered.

For advocates of religious liberty, there were highs, lows, and surprises—much like 2020 itself.

But overall, people of faith have much to celebrate and many reasons for hope. Here is how religious liberty fared during the past term at the Supreme Court.

Decided:

Roman Catholic Diocese of San Juan, Puerto Rico v. Feliciano

Decided: February 24

Who determines the structure of the Catholic Church? Well, according to a previous decision by the Supreme Court of Puerto Rico, the surprising answer was "the government."

But this is a blatant violation of the First Amendment. And it could easily be applied to other religious congregations like Methodists, Lutherans, Presbyterians, Baptists, Anglicans, Mormons, Seventh-day Adventists, Muslims, or Jews. That's why ADF filed a friend-of-the-court brief on behalf of the Ethics and Religious Liberty Commission of the Southern Baptist Convention.

Thankfully, the U.S. Supreme Court reversed the Puerto Rico Supreme Court's decision, sending it back to be reconsidered. This is a big win for religious liberty: Churches and religious organizations should be able to determine their own structure and administration without government interference.

Bostock v. Clayton County

Decided: June 15

The Court's decision in *Bostock* was disappointing, especially for ADF client Tom Rost, whose case *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission* was included in the decision.

Tom had been fighting in court for years after he was punished for following the law. Tom owns and operates a funeral home business that has been in his family for over 100 years. In 2012, Tom parted ways with a male employee after that employee expressed the intent to dress and present as a woman at work, in violation of the funeral home's sex-specific dress code.

Sex-specific dress codes are consistent with current employment law, yet the Equal Employment Opportunity Commission, a government agency tasked with enforcing federal employment law, went after Tom and his family business to try and change the law.

Unfortunately, the Supreme Court failed to give Tom justice. The Court's majority opinion determined that that an employer can be held liable under federal employment law—which prohibits discrimination based on sex—when the employer terminates an employee based solely on an employee's sexual orientation or transgender status.

But the ruling is much narrower than many have claimed. The Court limited the ruling to the employment context, and the ruling did not weigh in on important issues such as sex-specific showers and locker rooms, sex-specific dress codes, free speech, religious liberty, or women's sports. ADF is already engaged in multiple lawsuits to defend the truth on these matters.

Espinoza v. Montana Department of Revenue

Decided: June 30

This case was a huge win for school choice, religious freedom, and children.

Since the late 1800s, several states have had what is called a "Blaine Amendment" on the books. These laws—rooted in anti-Catholic bigotry—were an attempt to stop any state funding from going to religious schools. Montana is one of 37 states that still have a Blaine Amendment in 2020! And the state's department of revenue used this law to prevent students from benefiting from the state's tax-credit program if they decided to attend a religious school.

Thankfully, in a 5-4 decision, the Supreme Court struck down this application of the Blaine Amendment. And the Court relied on a past ADF win to do so. In that case, Trinity Lutheran Church in Missouri was denied the opportunity to participate in a state program because it was a religious organization. But in 2017, the Supreme Court said in *Trinity Lutheran Church of Columbia v. Comer* that the government cannot exclude churches or other faith-based organizations from public programs simply because of their religious status.

Now, in 2020, the Court built on that win to ensure that all religious schools in Montana could participate in the state's tax-credit program. This protects religious liberty and gives more children access to a quality education. In the future, a state that decides to provide financial assistance to private schools will be prohibited from discriminating against religious schools, even if that state has a Blaine Amendment.

Little Sisters of the Poor v. Pennsylvania

Decided: July 8

You've probably heard about the Little Sisters of the Poor.

This order of Catholic nuns have, unfortunately, been in the news for quite some time. These selfless women simply want to care for the elderly poor. But since 2012, they've been fighting against a mandate from the U.S. Department of Health and Human Services (HHS) that would require them to pay for abortion-inducing drugs in their employees' health care plans. But they cannot do this because of their religious beliefs.

In 2014 and 2016, the Supreme Court dealt major blows to that mandate in its decisions in *Hobby Lobby Stores v. Burwell* and *Zubik v. Burwell*. Then, in 2017, under the Trump administration, HHS issued a new rule that gave religious and pro-life organizations like ADF's client March for Life an exemption from paying for abortion-inducing drugs.

The disputes should have been over. Instead, Pennsylvania, California, and other states filed lawsuits to block the new rules and force organizations like Little Sisters and March for Life to violate their consciences. In *Little Sisters of the Poor v. Pennsylvania*, the Court upheld issuing the new HHS rules, giving the Little Sisters the freedom to live and serve according to their beliefs. Praise God!

At the same time, the Court granted review of ADF's case *March for Life v. California* and vacated the lower court's ruling against the exemption. Now pro-life but non-religious organizations like March for Life can freely operate according to their pro-life beliefs as well.

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

Decided: July 8

Who is best suited to make employment decisions at a religious school? The school itself or the government?

The answer seems obvious: the school. But two Catholic schools in California were sued after choosing not to renew the contracts of teachers, both of whom had many religious duties. The schools asserted their constitutionally protected freedom to determine who can teach their Catholic faith at their institutions.

Thankfully, the Supreme Court agreed. In these consolidated cases, the Court built on its 2012 ruling in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and clarified that the First Amendment prevents the government from meddling with a religious groups' employment decisions about who teaches the faith. ADF filed a friend-of-the-court brief in this case on behalf of Christian schools and associations.

Calvary Chapel Dayton Valley v. Sisolak

Decided: July 24

In the state of Nevada, when it comes to COVID restrictions, the state has decided to treat those using the slot machines of Las Vegas casinos better than those who would like to sit in the pews of their church. This includes Calvary Chapel Dayton Valley, which is located in a rural area outside Carson City. Like most churches across the country, Calvary Chapel shut its doors for months and livestreamed its services online in compliance with the Nevada Governor's restrictions during the COVID-19 outbreak. As part of the state's reopening plans, Governor Sisolak issued a rule allowing casinos, restaurants, bars, theme parks, and gyms to operate at 50 percent capacity.

But Gov. Sisolak's rule created tighter restrictions for churches than secular businesses. The 50-percent rule doesn't apply to them. Instead, churches like Calvary Chapel must meet in groups of 50 *people* or less no matter the size of their facilities. So a casino with a 1,000-person capacity can host 500 people; a church with a 1,000-person capacity can host—50.

This is an obvious violation of the Free Exercise Clause.

But, unfortunately, a 5-4 majority at the Supreme Court denied the church's request for an emergency injunction allowing churches to open at 50% capacity while the case is appealed. Justices Thomas, Alito, Gorsuch, and Kavanaugh all dissented vigorously. They would have granted churches relief straightaway.

"The world we inhabit today, with a pandemic upon us, poses unusual challenges," Justice Gorsuch wrote, "But there is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel."

Sadly, Nevadans' rights will remain restricted for the time being. But this case will continue for further arguments at the Ninth Circuit Court of Appeals, where the bar will be lower than when seeking emergency relief from the Supreme Court.

Cert. Granted:

Fulton v. City of Philadelphia

Granted: February 2

There are over 400,000 children nationwide in the foster care system waiting to find a loving home, and many of them are in Philadelphia. In March of 2018, the City put out an urgent call for 300 more foster parents.

But only days later, the City cut ties with Catholic Social Services, a private agency that has recruited, trained, and supported *thousands* of foster parents over the past 50 years.

But apparently none of that mattered. Why? Because Philadelphia disagrees with Catholic Social Services' religious beliefs about marriage and the family.

It didn't matter that CSS served more than 120 foster children and supervised around 100 different foster homes. Nor did it matter that more homes were desperately needed. Philadelphia put politics over kids and kicked Catholic Social Services to the curb—and with it loving foster parents like Sharonell Fulton, who fostered more than 40 children over 25-plus years' working with CSS.

This was wrong and unconstitutional. The Constitution prohibits government bureaucrats from targeting people of faith based on their religious beliefs. And it *certainly* protects CSS's right to live out its faith by serving children and families in need. That's what the Free Exercise Clause is all about.

So Sharonell, another foster mom, and Catholic Social Services asked the Supreme Court to put an end to Philadelphia's discriminatory policy. And on February 24, the Court announced that it would hear their case, *Fulton v. City of Philadelphia*. This is an important case for all adoption and foster care providers—like ADF clients New Hope Family Services and Catholic Charities West Michigan—whose religious convictions teach that the best home for a child is with a married mom and dad.

But the Supreme Court's decision in *Fulton* could go even further than that. If the Supreme Court rules in Sharonell's favor, it could bring an end to a flawed free-exercise test from the 1990 case *Employment Division v. Smith*—a test that has seriously undermined religious freedom ever since it was decided.

This case could also have huge implications for other freedom-of-conscience cases, like that of floral artist Barronelle Stutzman.

Uzuegbunam v. Preczewski

Granted: July 9

If you care about the First Amendment right to religious freedom *and* free speech, this will be an important case to watch in the coming term.

ADF has represented Chike Uzuegbunam since 2016.

Chike wanted to share his Christian faith with others on campus. And in the United States, he should be free to do so. But his university, Georgia Gwinnet College, stood in the way.

First, when Chike was standing outside on campus handing out literature and sharing his beliefs, an administrator stopped him. The administrator told him that he could only speak with a reservation and in one of the university's two "speech zones" which were open only 10% of the week and comprised less than 0.0015% of campus. If the campus were roughly the size of a football field, these zones would be about the size of a single sheet of paper.

Chike complied with the administrator and applied for and received a permit to speak in a designated zone. But then a campus police officer stopped him *again.* The officer told Chike that his speech amounted to "disorderly conduct" because someone had complained.

The college prevented Chike from exercising his right to speak, so Chike sued college officials in court. But even though the college clearly violated Chike's rights, two federal courts did not hold the college accountable because the college changed its policies and Chike graduated. The result was to allow the college to rob Chike of his First Amendment rights without any repercussions.

Chike's rights were violated, and he's still waiting for justice. This hurt not only Chike, but also other students—like Joseph Bradford—who decided not to speak on campus after seeing what happened to Chike.

Now, the Supreme Court has a chance to give Chike and Joseph the justice they deserve. ADF will be representing Chike before the Court on the merits during oral arguments next term.

Pending:

Thomas More Law Center v. Becerra

Petition for Certiorari Filed: August 26, 2019

Thomas More Law Center is a nonprofit organization based in Michigan that defends and promotes religious freedom, moral and family values, and the sanctity of human life.

Roughly 5 percent of its supporters are California residents. And the Law Center has always operated as a charity in good standing with California's attorney general. But in March 2012, the state's Attorney General's Office began to harass the law center and demand the names and addresses of its major supporters.

The attorney general's office has a terrible track record of keeping information private. And the Law Center's donors have very good reason to fear their information being leaked. The center's supporters, clients and employees have faced intimidation, death threats, hate mail, and even an assassination attempt from ideological opponents.

Every American should be free to support causes they believe in without fear of harassment or intimidation. So, Thomas More Law Center has asked the Supreme Court to stop California's blanket demand for the names and addresses of charity supporters.

Arlene's Flowers v. Washington

Petition for Certiorari Filed: September 11, 2019

Barronelle Stutzman, floral artist and owner of Arlene's Flowers in Richland, Washington, has been waiting for justice for over 7 years. In 2013 Barronelle declined to create a custom-designed floral arrangement for a longtime customer and friend's same-sex wedding. Barronelle serves everyone but she can't create messages that go against her Christian beliefs.

Because she stayed true to her relationship with Jesus Christ, Barronelle has been battling the state of Washington and now the ACLU in court. If she loses, she risks losing her business and even her life's savings.

She has already been to the U.S. Supreme Court. In 2018, the Court sent her case back to the Washington Supreme Court to be redecided in light of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

Unfortunately, the state supreme court issued an opinion largely identical to their original decision and ignored Barronelle's First Amendment rights. Barronelle has asked the U.S. Supreme Court to weigh in again.

Bruni v. City of Pittsburgh

Petition for Certiorari Filed: March 26, 2020

Who deserves to have their free speech protected? Every American.

But the City of Pittsburgh has a law that effectively censors the speech of pro-life sidewalk counselors by banning them from speaking within 15 feet of an abortion facility entrance in every direction. These pro-life counselors provide women entering and leaving abortion facilities with information about abortion alternatives, post-abortion resources, prayer, and personal support.

So, pro-life advocates challenged the law in court. The U.S. Court of Appeals for the Third Circuit failed to follow the Supreme Court's precedent in the 2014 *McCullen v. Coakley* decision which struck down a similar law in Massachusetts.

Now they are waiting to see if the Supreme Court will hear their case.

Maureen Collins

Web Writer

Maureen has a passion for writing and her work has appeared on The Federalist.