

SCOTUS 2021-2022: *Religious Liberty Cases to Watch*

CERT GRANTED

Carson v. Makin

Equal access to educational opportunities. The State of Maine runs an education program through which it pays private school tuition for students who live in certain thinly populated rural areas where no public schooling is available. This allows children in these areas to attend the school of their choice – unless they choose to attend a school that teaches too much religious content according to the State, which reviews schools’ curriculums to ensure that they aren’t engaging in “sectarian” behavior. States have a long history of excluding religious institutions from public benefits, often due to discriminatory Blaine Amendments that were passed during a wave of anti-Catholic sentiment starting in the late nineteenth century. But as Becket’s friend-of-the-court brief points out, the Supreme Court has long recognized that the Constitution prohibits laws that burden religious beliefs or actions simply because they are religious, most recently affirming this principle in *Espinoza v. Department of Revenue*. The Institute for Justice and First Liberty are representing students and their families in the case.

Status: Oral argument is expected in late 2021 or early 2022.

Dobbs v. Jackson Women’s Health Organization

Abortion distortion in religious liberty. In 2018, Mississippi passed the Gestational Age Act which bans abortions after 15 weeks of pregnancy. Shortly after Governor Phil Bryant signed the bill into law, Jackson Women’s Health Organization took him to court, arguing that the law violated *Roe v. Wade* and *Casey v. Planned Parenthood*. After losing the case in both the district court and Fifth Circuit Court of Appeals, the State of Mississippi appealed to the Supreme Court, which agreed to hear the case. Though Becket doesn’t take a position on abortion as such, we filed a friend-of-the-court brief at the Supreme Court to show the Justices the adverse effects that *Roe* and *Casey* have had on religious liberty. The brief argues that by removing the debate over abortion from the democratic process, the Court has allowed the issue to spill over into other areas of the law, particularly religious liberty, producing prolonged legal battles over proxy issues such as the contraceptive mandate.

Status: Oral argument is expected in late 2021 or early 2022.

Ramirez v. Collier

Settling clergy accompaniment once and for all. For decades governments have allowed and even encouraged clergy to minister to condemned men in the death chamber. That all changed in 2019 when Alabama sought to exclude a Muslim minister from the death chamber. The Supreme Court allowed that execution to go forward, but in a series of rulings involving Buddhist and Christian prisoners in Alabama and Texas, the Court has consistently said that states must provide access to clergy. As a result of these rulings Texas has now allowed clergy members back into the death chamber, but has denied John Ramirez the right to have his pastor pray audibly or lay hands on him in the moments before his execution—practices long allowed by Texas before 2019. Ramirez filed an emergency motion at the Supreme Court on September 7, 2021, and Becket filed a friend-of-the-court brief in support of Ramirez’s right to access clergy. The Supreme Court granted an emergency stay of execution and has now set the case for argument in November.

Status: On September 7, the Supreme Court granted an emergency stay of execution and agreed to hear argument in the case. The case will be argued on November 1, 2021.



Shurtleff v. City of Boston

Religious symbols in the public square. The City of Boston encourages private groups to make use of its City Hall Flag Poles to promote the many civic organizations in the city. Over the past 12 years, the city has approved over 280 “flag raisings” without a single denial but, in 2017, when Camp Constitution, a Christian camp, applied to have its flag raised on the City Hall flag pole, its application was denied because the camp’s flag includes an image of a Latin cross. In July 2018, Camp Constitution sued the City of Boston, arguing that the city’s denial of its request to raise the Camp Constitution flag on the City Hall Flag Poles violated the camp’s First Amendment rights. Camp Constitution lost at both the district court and First Circuit Court of Appeals. On June 21, 2021, Camp Constitution asked the Supreme Court to review its case, arguing that the lower courts had improperly applied Supreme Court precedent.

Status: The Supreme Court granted review of Camp Constitution’s case on September 30, 2021. The case will likely be argued in early 2022.

PETITIONS SEEKING SUPREME COURT REVIEW

Dignity Health v. Minton

Maintaining Catholic identity in Catholic healthcare. Dignity Health is a Catholic hospital in San Juan, California with the mission of providing compassionate medical care to further the healing ministry of Jesus. In accordance with its Catholic faith, Dignity Health cannot allow abortions, sterilizations, or euthanasia to be performed in its facilities or by its medical professionals. A transgender individual sued the hospital for refusing to perform a hysterectomy on a healthy uterus for the purpose of a gender transition because the hospital only performs hysterectomies in medically necessary circumstances. After losing in the Ninth Circuit Court of Appeals, Dignity Health has appealed its case to the Supreme Court, asking that it be allowed to practice medicine in accordance with its religious convictions.

Status: Dignity Health asked the Court to take its case on March 13, 2020. The Court will consider this petition again on September 27, 2021.



Diocese of Albany v. Emami

Protecting religious ministries from being forced to violate their beliefs. In 2017, the New York State Department of Financial Services mandated that employers cover surgical abortions in their employee health insurance plans. Immediately, a diverse coalition of religious groups—including Roman Catholic dioceses, Anglican nuns, Baptist and Lutheran churches, and Catholic ministries—asked the New York state courts to protect them from this regulation that would force them to violate their sincere religious beliefs about the sanctity of life. While New York provides a narrow religious exemption from the rule, it protects only religious entities that primarily employ and serve individuals who share the religious entities’ faith. This discriminatory rule punishes the many religious groups and ministries that provide critical community services and employ or serve people regardless of their faith. For instance, nuns would be forced to cover abortions because they provide social services to people of all faiths. Becket, alongside the law firm Jones Day, is representing this coalition of religious organizations at the Supreme Court.

Status: Becket and Jones Day asked the Court to hear the case on April 23, 2021. The case is conferenced for September 27, 2021.