2025 Religious Freedom Update Workshop

Developments in the Practice of Religious Freedom Law in 2024-25
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Introduction: As a nonpartisan organization, CLS has long worked with groups across the political and religious spectrum to protect religious freedom and life. This past year has been no different as CLS has worked with a variety of organizations to defend religious freedom. This workshop, which primarily focuses on the federal and state governments' actions affecting religious freedom (life issues are more directly addressed in other workshops), will update participants on a variety of actions by the Federal Courts, Congress, and the Executive branch during 2024 and 2025.

My goal for this time is not to do a deep dive into any one topic, since there are many angles and nuances involved in Religious Freedom cases and topics, but to touch on these important issues and to equip and encourage some of you non-experts so that you can grow in awareness of how you might better serve, whether it is on the board of a religious school or adoption agency, or as an engaged member of your community.

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COURTS

Supreme Court

1. **Establishment Clause**:*Catholic Charities Bureau, Inc. v. Wisconsin*, 605 U.S. 238 (2025)
    a. Issue: Does a state violate the First Amendment's Religion Clauses by denying a religious organization an otherwise-available tax exemption because the organization does not meet the state's criteria for religious behavior?
    b. Facts: Catholic Charities is a ministry arm of the Diocese of Superior in Wisconsin, providing services to the poor and disadvantaged as a way of living out and expressing Catholic doctrine. CCB sought an exemption from state unemployment insurance contributions in 2016, but was denied. The Labor and Industry Review Commission found the organizations were not operated primarily for religious purposes. The state circuit court reversed, siding with CCB, but then the Wisconsin court of appeals reversed, and the Wisconsin Supreme Court affirmed the denial of CCB's religious purposes exemption based on state law.
    c. Legal analysis: In a unanimous opinion (Sotomayor), the Supreme Court held that the Wisconsin statute, as interpreted by the Wisconsin Supreme Court, violates the First Amendment. The First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny. The Wisconsin Supreme Court's application of the statute imposed a denominational preference by differentiating between religions based on theological lines. Because the statute's application does not survive strict scrutiny, the Court said it cannot stand.
    d. PERSPECTIVE: This case is important because it emphasizes that laws may not be designed in a way that favors certain religious practices and structures over others. The government may not define what is sufficiently "religious" in order to qualify for a benefit or exemption. That creates an Establishment Clause challenge.
2. **Free Exercise and Establishment Clause**: *Oklahoma Statewide Charter School Board v. Drummond*, 145 S.Ct. 1381 (oral argument Apr. 30, 2025; opinion issued May 22, 2025)
    a. Facts: A virtual Catholic charter school sought approval to be an Oklahoma charter school under the state program. The Board approved it, but the state AG asked the OK Supreme Court to invalidate the board's contract. The OK Supreme

Court agreed and invalidated the contract, saying it was a public school and required to be non-religious. The school sought cert and it was granted.

b. Legal outcome: Unfortunately, this ended up 4-4, and with no legal content in the opinion, meaning that the decision of the Oklahoma Supreme Court would remain the law. The per curiam opinion gave no reasoning, but at oral argument, some of the judges seemed concerned that this went well beyond *Carson* because this can be seen as a fully-funded public school. The dispute was over what it means to be public, versus offering a public benefit that should not exclude based on religion.

c. PERSPECTIVE: no precedent was given, and no clarity about how far Carson may be extended in the free exercise universe. It may arise again in the future.

3. **Free Exercise and Parental Rights**: *Mahmoud v. Taylor*, 145 S.Ct. 2332 (2025)

a. Issue: Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?

b. Facts: Montgomery County public schools in Maryland approved certain LGBTQ-inclusive books for its English Language Arts curriculum in 2022. It initially allowed parents to receive notice and to opt out of lessons involving these books, but eliminated the notice and opt-out options in March 2023 due to concerns about too much complication and potentially undermining its goals. A diverse group of parents from various religious backgrounds sued, arguing that the decision violated their religious freedom and parental rights. The District court denied the PI for parents, and the 4th Circuit affirmed, saying they were unlikely to prevail on their free exercise clause because they had no cognizable burden and the policy met rational basis review.

c. Legal analysis: Ruling 6-3, the majority held that the parents are entitled to an injunction based on a free exercise violation. The refusal of opt outs substantially interfered with their right to direct the religious upbringing of their children and burdened their religious exercise. The court said it is exactly the kind of burden that *Wisconsin v. Yoder* found unacceptable. Justice Alito said the books go beyond mere "exposure" and carried a very "real threat of undermining" the parents' religious beliefs that they wish to instil in their children. He said the neutral and generally applicable analysis was not even necessary because it fit squarely within *Yoder*'s exception to *Smith*, but he did not call it hybrid. The Court said the school board could not prove that its system of refusing opt outs was necessary to achieve its interest, particularly because it allows opt outs for other things.

d. Justice Thomas' concurrence focused on the "ideological conformity" being enforced here in violation of the standards in *Yoder*. He said they could not

"insulate" themselves by "weaving religiously offensive material throughout its curriculum" in order to make it harder to accommodate the constitutional rights.

e. Justice Sotomayor's dissent spoke in extreme terms about how the decision "threatens the very essence of public education" by giving parents a "veto power over curricular choices."
f. PERSPECTIVE: This case is important because there is a long history of deference to school decisions, and parents have traditionally been told their main choice is whether or not to send their child to a public school or a private school, with very little influence over what is taught at the public schools. By giving substance to the right of parents to not have their ability to direct the upbringing of their children undermined, however, the Court has breathed life into the rights of parents again. It remains to be seen if this will be kept narrowly in the area of "opt outs" or if it will expand and in some ways require public schools to be a little more aware of the pluralistic culture.

4. Other cases possibly related to Religious Freedom interests:

a. *United States v. Skrmetti*, 145 S.Ct. 1816 (June 18, 2025) (Equal Protection challenge to Tennessee ban on sex-change procedures for minors)
    i. Facts: This is a challenge by three transgender minors, their parents and a doctor under §1983 to Tennessee's law that restricts gender-affirming care for minors (SB1), while allowing similar treatments for other medical conditions. The district court granted the motion for PI and denied the State's request for a stay. The Sixth Circuit granted a stay pending appeal and then reversed and remanded the case, 83 F.4th 460. Cert was granted.
    ii. Legal Analysis:
        1. The Majority says the law did not have classification based on sex that would result in heightened review for an EP violation. Then concluding that the law passed rational basis review and did not violate Equal Protection. It said the law classified based on age and based on medical use. Those classifications are subject only to rational basis review. The law does not trigger heightened review unless it was motivated by an invidious discriminatory purpose, but there is not evidence of that here. Nor does it classify based on transgender status because it removes certain diagnoses from the range of treatable conditions, and both transgender and non-transgender individuals can still seek treatment based on other diagnoses. It states that *Bostock* is not on point. The Court also indicates states have "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." The Equal Protection Clause is not meant to resolve fierce scientific and policy debates.

2. Justice Thomas concurred, clarifying that Bostock does not apply because Title VII is different from Equal Protection, and includes very different language, and it doesn't make sense to treat everything under the "sex" category in the EP context, because it could have significant unintended consequences. He also notes there is danger in courts simply deferring "to the authority of the expert class," because judges are not legislators.
3. Justice Barrett concurred, saying she would resolve that transgender status does not constitute a suspect class. She says it is common for laws to classify, and only certain ones are suspect. She says transgender status is 1) not marked by the same sort of obvious, immutable, or distinguishing characteristics, 2) is not made up of a "discrete group," and 3) it involves significant policy choices normally committed to legislative discretion and is not appropriate for courts. She says a history of discrimination is not enough to establish suspect class. She says the relevant question is whether there is a longstanding pattern of "de jure discrimination," distinct from private discrimination.
4. Justice Alito concurs in part and concurs in the judgment. He specifically says he believes it does classify based on transgender status, but says that status does not warrant heightened scrutiny.
5. Justice Sotomayor in dissent argued that the ban on gender-affirming care is a form of sex discrimination and should receive intermediate scrutiny. She also suggested that transgender status constitutes a quasi-suspect class under Equal Protection because they have faced pervasive discrimination, deserving greater legal protection.

iii. PERSPECTIVE: This case impacts how broadly Equal Protection protections will be read. It also impacts how much authority State's have to act in order to protect minors based on their policy decisions.

b. *Free Speech Coalition v. Paxton*, 606 U.S. 461 (2025)
   i. Facts: This is a Free Speech challenge by a Porn industry trade association that objected to age-verification measures in Texas' HB 1181, seeking to prohibit the distribution of sexually explicit content to children. The law applied to any "commercial entity that knowingly and intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-third of which is sexual material harmful to minors." They claimed it violated the First Amendment because it hindered the right adults have to protected speech.

ii. Legal Reasoning: The Court determined that the law is subject to heightened scrutiny, intermediate scrutiny, because it incidentally burdens the protected speech of adults, but that it passes intermediate scrutiny. The Court considered the nature of the burden and the nature of the speech at issue. It said that "history, tradition, and precedent" make clear that sexual content obscene to minors but not to adults is protected in part and unprotected in part, and the states may try to prevent minors' access. It passed intermediate scrutiny because it doesn't burden "substantially more speech than necessary to further those interests."

iii. PERSPECTIVE: This may impact the way courts view other interests the state has about children, and how the rights of others in the community might weigh in relation to that state interest. It may probably be understood pretty narrowly to apply in this child-protection area.

c. *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025)

i. Facts: Title VII claim by heterosexual woman who was denied promotion in favor of an unqualified lesbian woman and demoted in favor of an unqualified homosexual male replacement. The Sixth Circuit had a "background circumstances" rule that required members of a majority group to satisfy a heightened evidentiary standard to succeed in Title VII claims.

ii. Legal Reasoning: In a Unanimous decision by Justice Jackson, the Court held that there should not be a distinction in the application of the law based on majority group status. Every circuit should have the same standard and the same steps to apply in Title VII claims (the McDonnell Douglass framework). Title VII's disparate treatment provision doesn't draw the distinction between majority and minority group plaintiffs in its text. It focuses on individuals and whether the individual faced discrimination based on protected characteristics.

iii. Justice Thomas concurred, noting in particular that "Judge-made doctrines have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts." He also expresses some concerns about the McDonnell Douglas framework itself in employment law.

iv. PERSPECTIVE: This is helpful for potential claims where one might claim that a majority religious background should receive less protection.

d. *Lackey v. Stinnie*, 604 U.S. 192, 145 S.Ct. 659 (Feb 25, 2025)

i. Facts: Drivers' licenses were suspended under a Virginia statute for failure to pay court fines, and suspended drivers sued under §1983, claiming the statute was unconstitutional. The District Court granted the Preliminary Injunction. Then the state legislature repealed the statute and required

reinstatement of the suspended licenses. So the parties agreed to dismiss the case as moot. The drivers' attorneys sought attorney's fees as prevailing parties, but were denied because they had only received a preliminary injunction. They therefore were therefore not a prevailing party under §1988(b)

ii. Legal analysis: Roberts wrote for the Court. The court had to determine whether the drivers qualified as "prevailing parties" (a legal term of art) under §1988(b). It looked at the statutory text, because the "American Rule" says there must be express statutory authorization to allow reasonable attorneys fees.
    1. To be a prevailing party, there must be "*enduring* change in the legal relationship between" the parties, and a "transient victory" is not enough to qualify.
    2. The court rejects concerns that this decision would create an incentive to moot cases to avoid fees.

iii. PERSPECTIVE: This is likely to impact religious organizations, because they often seek preliminary injunctions, and then the cases settle after that. This decision will cause attorney's fees to be more difficult to get, meaning nonprofits with less resources may ultimately have less access to the courts, because cases often resolve based on a court's firm statement of the law in issuing a preliminary injunction.

5. **Cases for next term**:
    a. **Free Speech**: Chiles v. Salazar (from the 10th Cir.)
        i. Facts: A licensed counselor-therapist in Colorado was subject to a Colorado law that prohibit certain types of conversations between a counsellor and her clients. Clients often come to Ms. Chiles because they share her worldview and values, and they want her to counsel consistently with that faith. The law comes with steep penalties and the potential loss of a license. Ms. Chiles fears that if her conversations are even perceived as violating the law, she is at great risk. She therefore brought a pre-enforcement challenge. The District court denied her motion, and a divided Tenth Circuit affirmed.
        ii. Legal Analysis: The Tenth Circuit then upheld the ban as a regulation of her professional conduct, not speech. It thereby deepened a circuit split about whether to treat counseling conversations as conduct or speech.
            1. The Supreme Court will have to decide if this unique communicative profession can be regulated by prohibiting certain types of conversations and specific content, while allowing others.

2. The question is does the Colorado law regulate professional conduct and only "incidentally implicate speech," or is it content and viewpoint based restrictions on speech

iii. PERSPECTIVE: This case is about the constitutionality of a state's restrictions on professional speech. What is considered "conduct" instead of "speech" is important in many religious contexts, just as what is considered religious expression and religious exercise can be blurred.

b. **RLUIPA** – free exercise rights. *Landor v. Louisiana Department of Corrections and Public Safety* (5th Cir. 2024).

i. Issue: Whether the Religious Land Use And Institutionalized Persons Act of 200)(RLUIPA) authorizes damages suits against state officers in their individual capacities?

ii. Facts: State prison guards handcuffed Damon Landor, a practicing Rastafarian, and despite him sharing a relevant circuit court opinion about his religious rights, they forcibly shaved his hair. After he was released a few weeks later, he filed a §1983 suit under RLUIPA.

iii. Legal Reasoning: The Fifth Circuit condemned the guards' behavior, but followed circuit precedent to say damages were not available under RLUIPA. The en banc court denied review, but there were some dissentals saying it should have come out the other way, particularly because the sister statute, RFRA, had had almost identical language interpreted by the Supreme Court to allow a suit for damages.

iv. PERSPECTIVE: This is important because sometimes damages are necessary to vindicate religious freedom rights.

c. **Access to Federal Courts**:

i. *Olivier v. City of Brandon*, No. 24-993. (from the 5th Cir.)

1. The issue = (1) Whether this court's decision in *Heck v. Humphrey* bars claims under §1983 involving only prospective relief where the plaintiff has been punished before under the law he is challenging as unconstitutional; and (2) whether *Heck v. Humphrey* bars §1983 claims by plaintiffs even where they never had access to federal habeas relief.

2. A street preacher passing out religious literature and engaging in conversation was found to have violated an ordinance about proximity to an amphitheater with live events. He entered a no contest plea and received a suspended sentence and a fine. A few months later, he filed a §1983 action challenging the ordinances constitutionality and seeking forward-looking injunctive relief. The lower court said the prior case barred his claim. He said this was

not a collateral challenge to his conviction, but just forward looking, but still barred.

3. Key remedies question that is important to religious freedom, because the laws and regulations will often be like this, needing to be challenged in order to prevent future violations. The best situated person to challenge it is someone who is at risk of or who has already been subject to the unconstitutional harm.
4. We filed an amicus joined by diverse religious organizations, describing the importance of the call to evangelize in many faiths, and that cutting off challenges like this will threaten the public exchange of faith moving forward.

ii. *First Choice Women's Resource Centers, Inc. v. Platkin* (from the 3d Cir.)

1. See below for description, under "Jurisdiction and Justiciability."

Courts of Appeals cases:

1. Jurisdiction and Justiciability

a. **Standing**: *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler* (9th Cir. March 6, 2025)

i. Facts: Cedar Park Assembly of God church did not want health insurance coverage for its employees that included abortion services, and had been accommodated by an insurance provider based on WA conscientious objection statute. Then the WA Parity Act required covered employers to provide coverage for abortion services. Wash. Rev. Code § 48.43.073(1)(a). Its implementing regulations also required this. The church was then not able to find insurance coverage that would accommodate its exception or accommodation, and ended up having to renew a plan with abortion coverage, in violation of its beliefs. It challenged the Parity Act in court in 2019.

ii. Legal Analysis: the court said the church lacked standing to challenge Washington's Reproductive Parity Act based on the Free Exercise clause. It said that it had failed to establish causation, and that the fact that there was independent decisions by insurance carriers meant it was not direct harm from the Act itself. It was downstream conscience injuries, and so did not satisfy injury in fact or causation and the harm was "not traceable to the Parity Act." It said there was no redressability because the problem would not be clearly solved, even if the court struck down the Parity Act.

iii. PERSPECTIVE: This convoluted analysis is concerning because it is hard to imagine how anyone can have standing to challenge laws with clear implications that play out immediately and directly if they simply have a

carrier in between that has at least partially independent judgment involved. The dissent helpfully pointed out this problem, so hopefully it will be resolved in the future.

b. **Standing related to speech claims**: *Speech First v. Whitten* (7th Cir. 2024) (not reported and cert denied)
    i. Facts: About the idea of "Bias response teams" on college campuses. Indiana University operates one that invites students to report bias incidents anonymously, describing a bias incident as "any conduct, speech, or expression, motivated in whole or in part by bias or prejudice meant to intimidate, demean, mock, degrade, marginalize, or threaten individuals or groups based on that individual or group's actual or perceived identities." The team then has several options, including supporting the student, investigating potential violations, logging reports, and then referring for possible discipline. Speech First challenged the policy on behalf of students who have unpopular views and who self-censor out of fear.
    ii. Legal Analysis: The Seventh Circuit had previously rejected standing on a similar case, saying that there was not a credible threat of enforcement and not an "objectively reasonable chilling effect" on speech, and said that conclusion also controlled this case.
        1. Justice Thomas dissented from denial of cert on March 3, 2025, saying that there is a clear circuit split with regard to whether there is standing. The result was determined by binding 7th Cir precedent.
    iii. PERSPECTIVE: This has implications for when individuals who are fearful of policies being enforced against them can bring a pre-enforcement challenge. With the denial of cert, the answer will have to wait.

c. **Ripeness**: *First Choice Women's Resource Centers Inc. v. Attorney General of New Jersey* (3d Cir. 2024)
    i. Issue: May a religious pro-life organization ask a federal judge for protection of its First Amendment rights against a harassing investigation by a state attorney general?
    ii. Facts: the AG of New Jersey served a subpoena on First Choice, a Pregnancy Center in New Jersey, after beginning a public campaign to smear all pregnancy centers. First Choice challenged the subpoena, but was denied relief because the subpoena was not self-enforcing, and so the case was not ripe. The AG then sought to enforce the subpoena against First Choice, and the state judge ordered that First Choice respond, but did not threaten contempt. The judge claimed to have considered constitutional arguments as well, but indicated further discussion would be

involved in those disputes. First Choice, believing its claims were now ripe, filed again in District Court. The Court once again found the claims not ripe because there wasn't an immediate threat of contempt and the state court could consider the constitutional concerns. The Third Circuit affirmed.

iii. Legal Analysis: The Third Circuit concluded that First Choice's claims were still not ripe, and said that its constitutional interests would be adequately addressed in state court in the meantime. It ignored that it could very easily mean that the Federal Courts would never be able to review the constitutional question due to preclusion.

iv. PERSPECTIVE: This narrow view of ripeness can prevent some individuals and organizations from ever vindicating their constitutional rights. It is also partly based on a wrong assumption that there is no harm unless there is an official court order or finding of contempt. There are better ways to prevent frivolous lawsuits than this overly restrictive reading of ripeness. The Supreme Court has agreed to hear this case next term. It involves a circuit split and, if the denial based on ripeness is upheld, it could entrench a preclusion trap, that could prevent important constitutional questions from being heard in Federal court. In addition, it creates incentives for state officers to use investigative tools in a targeted manner to harass disfavored groups and silence disfavored viewpoints with impunity.

d. **Abstention Doctrine**: *West Virginia Parents for Religious Freedom v. Christiansen* (4th Cir. Dec 31, 2024)

i. Facts: mandatory vaccination requirement for children in West Virginia. Parents sued, claiming the mandatory vaccination policy with no religious exemption violated the Free Exercise Clause.

ii. Legal Analysis: The Fourth Circuit said the trial judge wrongly applied Pullman abstention to avoid resolving the free exercise claim and clarified that federal court abstention is "the exception, not the rule." (*4). It can be invoked "to avoid the unnecessary adjudication of a federal constitutional issue and to prevent friction between federal and state legal principles." *Id.* But it should be reserved for when state law is unclear, not just to give states the first chance to hear a federal question. The Fourth Circuit sent it back for the district court to consider the First Amendment Free Exercise Clause claim.

iii. PERSPECTIVE: this is helpful to ensure that important federal questions (when there is not unclear state law questions) will be considered in a timely manner in federal court.

2. Free Exercise

a. *Roman Catholic Diocese of Albany v. Harris*, 42 N.Y.3d 213 (2024) [On appeal from the Court of Appeals of NY; GVRd in light of Catholic Charities, 145 S.Ct. 2794 (2025)]
   i. Facts: A New York state regulation requires employers to provide health coverage for medically necessary abortion services. It exempts a narrow group of employers if they meet all the standards listed, including a requirement that their purpose is to inculcate religious values and primarily hire and serve those of the same faith. Employers brought suit, claiming violation of free exercise. Summary Judgment granted for the state.
   ii. Legal Analysis: The New York court focused on the neutrality and general applicability, and found rational basis review applied. But it didn't consider the principle that the Supreme Court used to decide *Catholic Charities* yet.
   iii. PERSPECTIVE: The question now is whether strict scrutiny applies to a state law that exempts only some religious employers based on the state's definition of religious criteria.

b. **Religious Motivations**: *United State v. Safehouse* (3d Cir. 2025)
   i. Facts: Nonprofit planning to open safe injection site for those struggling with opioid abuse. The owners have religious motivations, and therefore claim that they are a religious organization, able to make RFRA claims.
   ii. Legal Analysis: The district court said Safehouse cannot claim protection from federal prosecution based on RFRA and free exercise, just because it claims a religious motivation.
      1. Oral argument was held on April 9, 2025, but a decision has not been issued yet.
   iii. PERSPECTIVE: This is important in terms of outlining what makes an organization religious, and how far motivation and mission go in that analysis.

c. **Prison Ministry**: *Schmitt v. Rebertus*, 148 F.4th 958 (8th Cir. 2025)
   i. Facts: Mr. Schmitt has volunteered for more than ten years at the Minnesota Correctional Facility to teach a religious program on manhood for those inmates who would like to participate. In 2023, however, he was told he could no longer teach it because it conflicted with the DEI values of the department because of certain religious teachings about gender included in the program that they believed might be unhelpful to reform certain behaviors. The District Court ruled in favor of Rebertus and the government because of the "strong public interest in allowing prison administrators discretion over inmate rehabilitation."

ii. Legal Analysis: The court said he established likelihood of success on the merits, supporting his motion for PI."*Turner*'s reasonable-relationship test [applies] *only* to rights that are inconsistent with proper incarceration." So rights that don't need to be limited in the prison context, like the right not to be discriminated against based on race, must receive strict scrutiny (967). The court declines to decide if that exception would apply here, however, instead saying it fails the *Turner* factors. Here it fails the first *Turner* factor because, while it is a legitimate penological interest, it is not "legitimate *and* neutral," applied without regard to the content of the expression. The government's mechanism to promote its legitimate interest "must be unrelated to the suppression of expression." And the policy must be neutrally applied. It is clear here that they opposed Rebertus' particular viewpoint.

iii. Judge Kelly dissents, saying that MDOC made a strong argument that its "rehabilitative programming constitutes government speech."

iv. PERSPECTIVE: This is important because it relates to how much the government can shut down speech and religious exercise or practices it doesn't prefer. The decision about whether something is government speech, or a restriction of the speech of others' based on viewpoint, is a key distinction.

d. **Parent Free Exercise Claim**: *Miller v. McDonald* (2d Cir. March 3, 2025)

i. Facts: Amish challenge school vaccine requirements because the school removed the religious exemption option. The parents claim a free exercise violation because the medical exemption remained.

ii. Legal Analysis: No free exercise violation because public health law is neutral and generally applicable. Secular conduct is not always comparable to religious conduct; it must pose risks at least as harmful to the legitimate government interests. Here the two exemptions were different in scope and duration, and the medical exemption does not qualify as an "individualized exemption" because the medical exemption is different in scope and duration and doesn't involve a lot of discretion. It is "granted only with 'sufficient' documentation" and is limited to only a specific immunization as medically specified. Finally, the court distinguishes *Yoder* because it concludes that this is not about parents needing to control the religious upbringing of their children, and additionally involves public health.

iii. PERSPECTIVE: This case does provide a slight cabining of the meaning of comparable secular activity and individualized exemptions, but will hopefully be limited to Covid type cases.

e. **Parent Free Exercise Claim**: *Jane and John Doe No. 1 v. Bethel Local School District Board of Education* (6th Cir. Aug 26, 2025).
    i. Facts: Parents object to the school policy allowing bathroom use based on preferred gender identity. Some Muslim community members donated to construct a gender-neutral restroom, but the bathroom policy remained. The lawsuit followed. It was declared moot after the student left the school district and Ohio enacted SB 104. Damages claim is all that is left, based on free exercise and due process claims by parents.
    ii. Legal Reasoning: On free exercise, court affirmed dismissal of claims, saying this was an incidental burden on religious exercise pursuant to a neutral and generally applicable policy. Applying *Mahmoud* to only cover situations where there is a real threat of undermining religious beliefs the parents wish to instill, but saying the bathroom policy is not that kind of burden. Then looking at whether neutral and generally applicable, and finding it is because it does not differentiate between religious and secular conduct. Then applying rational basis. On the parental due process right, the court confirms that parents have no right to dictate how schools teach. This is not intruding on the body of the child like *Gruenke*, but is just a decision about how the school operates.
    iii. PERSPECTIVE: It will be interesting to see what situations *Mahmoud* will be seen as applying to. I think it may remain only in the "opt out" framework.
f. **State Benefit Program**: *St. Mary Catholic Parish in Littleton v. Roy* (10th Cir. 2025)
    i. Facts: Two Catholic parishes operating preschools that are exclude from the Universal Pre-K program in Colorado, which provides funding for preschool for eligible children. Providers have to meet the criteria including the "equal opportunity" standard of providing services regardless of protected categories. Says it allows faith-based, so families have choices, and even allows congregational preference. These schools require statement of community beliefs signed. Diocese asked for religious exemption, but denied. The District Court denied a permanent injunction. It said the program was not excluding because of religious status and that the rules were neutral and generally applicable. It also said there was no *Masterpiece* problem, because no hostility. 736 F.Supp.3d 956
    ii. Legal Analysis: 10th Cir. looking at <u>two free exercise analyses</u> here (the public benefit analysis and the neutral and generally applicable analysis)
        1. When state offers benefit, it can't withhold because of religious status (*Carson, Espinoza, Trinity Lutheran*). Here faith based preschools are not excluded, but just asked to agree to the

nondiscrimination requirement, which applies to all. There is no prohibition on the use of funds for religious purposes.

2. If the nondiscrimination restriction, however, incidentally infringes on their ability to exercise their religious beliefs, then you look at whether the law is neutral and generally applicable. (*Smith, Fulton*). This involves asking whether the govt acted in a manner intolerant of religious beliefs (trying to suppress religious views). Here, the effort at changes was to try to accommodate the religious needs, not to target them, in contrast to *Lukumi* and *Masterpiece*.
3. To be generally applicable, the law may not include a mechanism for individualized exemptions. The Court dismisses two claims about possible individualized exemptions, and finds it generally applicable. The "catchall preference" in the list of preferences allowed by the preschools does not compromise it because it is an "unrelated exception" and may not be used to avoid the nondiscrimination requirement, which is required by statute. The "temporary waiver provision" does not compromise it because it allows temporary exceptions to some requirements (not nondiscrim) while getting things in order to meet them, nondiscrim is seen as an unwaivable health and safety standard.
4. If some exceptions favor other listed statuses, the court says it still doesn't remove general applicability because it is looking at "the general applicability of the nondiscrimination requirement *as it relates to sexual orientation and gender identity*." It then says other categories are not "comparable" in undermining the state's interest. It confirms that no preschool is allowed to take sexual orientation or gender identity into account for any reason in admissions.
5. The court then throws in a final thought – there is no free exercise violation, because it never says they can't advocate whatever religious doctrine they have. It simply says if they choose to take money from the state, they have to keep their doors open to all.

iii. PERSPECTIVE: Interesting how the analysis here distinguishes all the Free Exercise cases. This is an incredibly narrow reading of the Supreme Court's recent free exercise caselaw. And it completely ignores the burden on free exercise that this policy causes to preschools, instead claiming "The program is a model example of maintaining neutral and generally applicable nondiscrimination laws while nonetheless trying to accommodate the exercise of religious beliefs."

g. **State Benefits Program**: *Youth 71Five Ministries v. Williams* (9th Cir. 2025) (en banc petition in 9th Cir. pending)
    i. Facts: Oregon Department of Education grant program to fund community orgs that serve at-risk youth in order to further statutory goals. The orgs have to go through a competitive application process requiring certification of compliance with policies. Youth 71Five had gotten funding since 2017, but the state passed a new policy requiring that they certify they don't discriminate based on protected characteristics, including religion. But 71Five requires its employees and volunteers to be Christian. Once the state found out, they withdrew the conditional grant of the award. 71Five sued based on free exercise, seeking reinstatement of the grant. The district court denied a preliminary injunction and dismissed. The Ninth Circuit affirmed in part, reversed in part, and remanded.
    ii. Legal Analysis – Free Exercise: The Ninth Circuit said 1) it did burden their religious exercise, but 2) the rule is likely "neutral," does not show any hostility to religion, and there was no evidence of "exceptions" having been granted. It said funding was not denied based on a practice unique to religious organizations. It was just applying the same rule to all grantees – secular groups might discriminate based on religion too…, and 3) it was likely generally applicable because there was no mechanism for individualized exemptions and it treated religious and secular activities the same.
        1. The court distinguished *Catholic Charities*, saying any different application to different types of religious groups was just an "indirect consequence" of the "general prohibition."
    iii. Legal Analysis – Expressive Association: The court found no association right leading to more scrutiny of the funded activities, saying it is government funding, so as a limited open forum, the government could have some restrictions as long as they are viewpoint neutral. It said it was viewpoint neutral, even if in practice "it has an incidental effect on some speakers or messages but not others." BUT the court did acknowledge that an organization should not be punished if it had religious requirements for parts of the organization that were not funded by the grant. In other words, while the grant's terms were fine, they could not be imposed on an entire organization to be qualified, if the org was willing to certify that it would be followed as to the funded parts of what the org did. Otherwise, it would violate expressive association rights.
- PERSPECTIVE: This shows why *Smith* needs to be overturned. The simple application of whether or not there is fair treatment based on religious identity is completely muddled by the "neutral and generally applicable" discussion.

h. **Christian School Sports Case**: *Mid Vermont Christian School v. Saunders* (2d Cir. Sept 9., 2025)
    i. Facts: Christian school with firmly held religious beliefs about the immutability of sex banned from state sponsored athletics because it chose to forfeit a playoff basketball game rather than play against a male athlete. VPA policy allowed for participation based on gender identity. The school objected and forfeited the game in the state playoffs. After the game, VPA said it was "blatant discrimination under the guise of religious freedom." 3 weeks later, it determined the school was ineligible for all VPA activities, including non-athletic events as well. The school sued, claiming free exercise violations. The District Court said the policies were neutral and generally applicable and applied rational basis review, upholding them.
    ii. Legal Analysis: The Second Circuit reversed, saying the school was likely to succeed in its free exercise claim, showing the expulsion was not neutral and displayed hostility toward the school's religious beliefs. It said the school was entitled to a PI reinstating its membership with VPA.
        1. Noting expressions of hostility (direct questioning of the validity of beliefs and their sincerity), it cited *Fulton* and *Masterpiece*, saying that "even under a neutral law of general applicability, the government still fails to act neutrally when it proceeds in a manner intolerant of religious beliefs." (cleaned up).
        2. The court also noted that the VPA violated its own norms, choosing an extreme ban that it had never done before without following its procedures.
    iii. PERSPECTIVE: this is a helpful perspective and awareness of how hostility can show up in different ways, and how it can certainly poison the application of supposedly neutral standards.
i. **Targeted laws**: *Bella Health and Wellness v. Weiser* (D CO, Aug 1, 2025)
    i. Facts: pre enforcement challenge by pregnancy centers to law in CO defining provision of medication abortion reversal as unprofessional conduct by doctors, nurses, and pharmacists.
    ii. Legal Analysis:
        1. Yes, objection to this prohibition is motivated by sincerely held religious beliefs, and the law burdened their free exercise by saying they can't offer APR to women.
        2. Law not generally applicable – because this prohibition is not generally applicable to other non-religious uses of progesterone.
        3. Permanent injunction against enforcement granted.
    iii. PERSPECTIVE: It is always key what they link the "generally applicable analysis to. Here the idea is about uses of progesterone, noting that it is

particularly targeted at this religiously motivated use because other off-label uses are not considered outside of generally accepted standards of medical practice in CO. [Other times the analysis might focus on whether this particular prohibition applies to all medical people, in which case it might have been upheld…]

j. *Catholic Benefits Association v. Lucas* (D ND, April 15, 2025)
    i. Legal Analysis: About the PWFA and Title VII of the Civil Rights Act. The district court Converted prelim injunction to a permanent injunction. It said the EEOC can't interpret or enforce the PWFA or implementing regulations against the Bismarck diocese "in a manner that would require them to accommodate abortion or infertility treatments that are contrary to the Catholic faith, speak in favor of the same or refrain from speaking against the same."

3. Establishment Clause

a. *Hisenrath v. School District of the Chathams* (3d Cir. May 5, 2025)
    i. Facts: A parent sued about the constitutionality of a middle school social studies curriculum because it included instructional videos about Islam. She claimed it violated the Establishment clause.
    ii. Legal Analysis: Using the "historical practices and understandings" test (established by the Supreme Court when it overturned *Lemon*), the court notes that public education didn't exist when the Constitution was adopted, so it would have to use "analogical reasoning." It then says that the school's curriculum does not have traditional hallmarks of religious establishment because it did not involve proselytizing and was integrated into the curriculum as part of "an appropriate study of history, civilization, and comparative religion." (quotations removed).
    iii. PERSPECTIVE: The Third Circuit is moving more broadly towards historical analysis based on how the Supreme Court sought to replace *Lemon* when it overturned it. This may be a direction followed by other courts. Ultimately, it is helpful that exposure to religious beliefs and ideas is not considered establishment.

4. Church Autonomy

a. *McRaney v. NAMB* (5th Cir. 2025)
    i. Facts: A strategic partnership agreement (SPA) dispute between a local Baptist Convention and the larger governing board. A pastor was not meeting the terms of the SPA. When the local Baptist Convention fired him, he blamed the North American Mission Board, so campaigned against them and then sued them for tortious interference. The District

court dismissed on church autonomy grounds. The 5th Circuit reversed, saying it was premature to decide. Then discovery proceeded, and the district court again dismissed on church autonomy grounds.

ii. Legal Analysis: This time, the 5th Circuit agreed. It said that church autonomy is about guaranteeing religious institutions "independence in matters of faith and doctrine and in closely linked matters of internal government." It said the purpose is to safeguard autonomy "with respect to internal management decisions that are essential to the institution's central mission." The Court clarified a few helpful things about church autonomy:
    1. It applies to the dismissal of faith leaders, the determination of membership and polity (church governance), to internal church communications about such things (including frank discussion), and the meaning and importance of religious beliefs.
    2. The courts may not pierce it – it is a structural bar; more than an affirmative defense. This means that even neutral and generally applicable employment discrimination statutes may not apply when it is in play.
    3. "Where the church autonomy doctrine applies, its protection is total." In addition, it "must be resolved at the threshold of litigation"

iii. PERSPECTIVE: This is an important clarification of church autonomy doctrine. It lays out the arguments clearly and well, and will likely become a key reference for future cases touching on church autonomy.

b. *Huntsman v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*, (9th Cir. Jan 31, 2025) (En banc)

i. Facts: the claim is that a church committed fraud under CA law using tithing funds to finance commercial endeavors, even though it said it would not do so.

ii. Legal Analysis: The majority did not address the church autonomy issue, but instead decided it on the merits by saying no reasonable juror could conclude that the church misrepresented the source of the funds. It said it could decide that because it was not engaging on "matters of Church doctrine or policy." But two concurrences said church autonomy was involved, and that it was "running headlong into basic First Amendment prohibitions on courts resolving ecclesiastical disputes" because it is an illusion to say it is "merely a secular lawsuit." Judge Bumatay concurred in judgment only, specifically saying the merits should not be reached, and carefully examining the history of church autonomy.

iii. PERSPECTIVE: The concurrences provide good resources for the history of church autonomy doctrine.

c. *O'Connell v. USCCB* (DC Cir., Apr 25, 2025)
    i. Facts: Fraud claim about the use of church donations. The USCCB raised church autonomy as a basis for barring the claim in a motion to dismiss, but the district court denied the motion, saying that the claims raised "a purely secular dispute that could be resolved according to neutral principles of law." The district court said it would be careful if purely religious questions came up. USCCB immediately filed an appeal seeking interlocutory review.
    ii. Legal analysis: The DC Circuit dismissed for lack of jurisdiction because it is not a final decision, and the collateral order doctrine does not apply. It said the collateral order doctrine applies when a claim of right is involved that is not entwined with the merits and is conceptually distinct. (1252). It then notes that church autonomy does not fall automatically into this narrow category because the neutral principles approach is an option.
    iii. PERSPECTIVE: While the DC Circuit indicates that the circuits are unanimous in this conclusion, it is still problematic because it means the courts may involve themselves in church matters as cases move forward and church autonomy principles won't operate as a bar.
d. *Atlantic Korean American Presbytery v. Shalom Presbyterian Church of Washington, Inc.* (VA. App., March 11, 2025)
    i. Facts: Church property dispute between the church and the Korean American Presbytery. The church went to the Presbyterian Church Synod, but then went to civil court when it was unhappy with the Synod's ruling.
    ii. Legal Analysis: The Virginia state appellate court held that the ecclesiastical abstention doctrine barred civil courts from hearing the property dispute. It said "Since we find the Synod's decision deprives the circuit court of jurisdiction to hear this matter under the ecclesiastical abstention doctrine, we agree that the circuit court could not reach this matter because it lacked jurisdiction even to hear Shalom's claim as pleaded." It also included a review of the development of the ecclesiastical abstention doctrine in VA.
    iii. PERSPECTIVE: This is an important affirmation that courts should not get involved when a spiritual body makes a structural decision.

5. Employer/Employee Dispute cases

a. Ministerial exception

i. *Markel v. Union of Orthodox Jewish Congregations of America,* 124 F.4th 796 (9th Cir. 2024)
    1. Facts:An orthodox Jew appointed by rabbis to supervise the preparation of food for religious standards became dissatisfied,

resigned, and filed suit raising wage and fraud claims against his employer. The district court found he was a minister and that the ministerial exception categorically barred his claims. He appealed.

2. Legal Analysis: the court describes the ministerial exception and how it is about preserving a religious institution's autonomy with respect to internal management decisions, particularly in relation to "mission-critical employees" as defined by the religious organization. (803). The court notes that "the rule permits no exceptions. It is categorical."
    a. It finds that OU is a religious institution, and that the fact that it competes with other for-profit companies does not change that. (803). It says that courts should look to "relevant metrics" in determining if an institution is religious, including the presence of a religious mission, whether it would be exempt under Title VII
    b. It finds that Markel was a minister, looking holistically, and noting that he was performing vital religious duties, and that his work was "essential to" the religious mission of the organization. (806-07)
    c. The court says the issue cannot be avoided based on a claim that the "dispute …is secular." But with the ministerial exception doctrine, the religious institution does not "need to identify a 'religious' justification for its employment-related decisions." (808) The court uses a history-based approach to support this conclusion, based on *Kennedy*, to emphasize the Establishment Clause interests in avoiding entanglement. (808).
    d. Notably, the Court, in fn.5, also agrees with the Fourth Circuit's *Billard* case, that the ministerial exception "can be raised by courts sua sponte" in order to avoid entanglement in religious issues, and indicates that early discovery should be limited "to whether an employee is ministerial."
3. PERSPECTIVE: This is helpful to see the ministerial exception thoughtfully applied with a very principle-based approach. It is an important recognition that the constitutional bar to these types of claims is well established.

ii. *McMahon v. World Vision* (9th Cir. Aug 5, 2025)

1. Facts: This is about an applicant for a customer service representative for a religious org that raises funds and serves the poor here and overseas. She was offered the job, but then the job

offer was rescinded when World Vision learned that she was in a same-sex marriage, indicating that it was inconsistent with its beliefs and teachings, and pointing out that the role was outward facing and required communicating on behalf of the organization and fulfilling spiritual responsibilities. The District Court ruled in the employee's favor, holding that World Vision violated Title VII and WLAD when it rescinded her job offer, and holding that the religious employer exemption, the First Amendment ministerial exception, and the freedom of association did not apply.

2. Legal Analysis: The 9th Circuit held that the ministerial exception does apply in this case, making some important observations:
    a. Focusing on employees that "performed 'vital religious duties' in light of the core missions of their respective organizations."
    b. "the district court erred by viewing this role's responsibilities in the abstract, isolated from World Vision's central mission." In fact, they interface with donors, "which World Vision views as a form of ministry or religious practice" are key to "pursuing its central religious mission," and "are World Vision's 'voice,'" with key communication responsibilities.
    c. Says "that a position has primarily administrative or secular job duties does not foreclose the possibility that the position qualifies under the ministerial exception."
3. PERSPECTIVE: It is helpful to have further clarity that the ministerial exception applies based on how the organization sees the person as representing its voice and mission, not on an outside analysis of whether the duties are mostly secular. This acknowledges that "accomplishing the mission and spiritual goals" the organization defines should be considered.

b. **Non-ministerial employees**:
    i. *Union Gospel Mission of Yakima, WA v. Ferguson*, 2024 WL 3755954 (9th Cir. Aug 12, 2024) (oral argument held June 3, 2025).
        1. Facts: YUGM has employees that likely do not qualify as ministers under the ministerial exception, but that it has religious hiring requirements for. So because of a change in interpretation of the state nondiscrimination law's exemption for religious employers, it moved for a PI to prohibit enforcement of WLAD against it in relation to certain employees, but its suit was dismissed for lack of standing. The 9th Circuit reversed, saying they had standing for a

pre-enforcement suit because they "sufficiently alleged" they intended "to engage in conduct arguably proscribed by multiple sections of the WLAD." The District court then granted the preliminary injunction, saying the state could not enforce WLAD against it.

2. Legal Analysis: because the Washington Supreme Court decision in *Woods v. Seattle Union Gospel Mission* (Wash 2021) held that it would read WLAD's religious employer exemption to reach only those employees covered by the ministerial exception under the First Amendment, it meant that the organization was at risk of being found in violation of WLAD for its requirement that its employees share its faith. It's pre-enforcement challenge could continue, and it merited a preliminary injunction. The Ninth Circuit will hopefully find that church autonomy extends to all employees for a mission-based organization like UGM, finding a First Amendment limit to the application of WLAD.
3. PERSPECTIVE: This is an important case about the rights of religious organizations and hiring in relation to roles that don't fall into the ministerial exception.

c. **Title VII religious exemption**: *Zinski v. Liberty Univ*., 777 F.Supp.3d 601 (W.D. VA, Feb. 21, 2025)
   i. Facts: former IT employee sued the Univ for firing her after she disclosed her transgender identity. She filed suit claiming unlawful discrim under Title VII. Liberty claimed it was based on its religious beliefs and doctrine. The DCt ruled for her, refusing to dismiss the case, saying
   ii. Legal Reasoning: Title VII's religious exemptions apply only to discrimination on the basis of religious belief, not discrimination on the basis of sex. The Ministerial exception does not apply at this stage. It would not significantly burden the university's right of expressive association.
   iii. PERSPECTIVE: This narrow view of the Title VII religious exemption is concerning because it caricatures religious beliefs about other topics (like SOGI) as "allowing discrimination." The court says it could "subject potentially thousands of people to discrimination," and implies that it would be giving special power and privilege to "religious institutions" over "secular institutions." It then concludes that Title VII's religious exemption must be kept "narrow."

d. **Religious Org rights**: *Union Gospel Mission of Yakima Washington v. Ferguson*, 2024 WL 3755954 (9th Cir. Aug 12, 2024)(not reported). This is not decided on the merits yet.

i. Facts: UGM is a religious nonprofit. It requires all its employees (including those in operational positions that might not fit the ministerial exception) to sign and agree to its statement of faith and core values, requiring them to agree to adhere to a Christian lifestyle as well. It sued the Washington AG, seeking a PI against enforcement of the WLAD and asking to declare parts of the WLAD (Washington Law Against Discrimination, Wash. Rev. Code § 49.60.030(1)(a)) unconstitutional in light of *Woods v. Seattle's UGM* (Wash 2021), which narrowed the meaning of the religious-employer exemption in WLAD to just ministerial exception situations. D.Ct. granted the state's motion to dismiss.
ii. Legal Reasoning: Reversing and remanding. Finding standing and injury in fact, but remanding for DCt to consider 1) prudential ripeness and 2) YUGM's motion for a preliminary injunction.
iii. PERSPECTIVE: did not yet get to the merits

e. **Religious Org rights**: *Gen. Conf. SDA v. Horton* (D. MD, Jun. 18, 2025)
i. Facts: lawsuit by the Seventh Day Adventist Church against Maryland's AG, challenging a Maryland SCt decision (Doe v. Catholic Relief Services, 300 A.3d 116 (Md. 2023)) limiting the religious exception for religious orgs under its employment discrimination law MFEPA to just those who meet the ministerial exemption. So now their longstanding hiring practices conflict with Maryland law, preventing the church from being able to confidently fulfill its religious mission. They argue they must have the freedom to make these hiring decisions based on faith, since their religious beliefs and purposes permeate their workplace.
ii. Legal Reasoning: DCt ruled against the church, denying the Preliminary injunction. First, it describes the Maryland standard that SDA is challenging as unconstitutional: It says that the Maryland SCt gave the MFEPA religious exemption "its narrowest reasonable reading" and said the exemption is based on the "type of work performed by the employee." It would not include a position focused on secular activities. The Maryland decision identified factors to consider in determining "what constitutes a core mission of a religious entity," though it said it should not do "analysis of religious doctrine." Second, it rejects the ways SDA claims that analysis violates the constitution (church autonomy, entanglement, free exercise, establishment, assembly, due process). It says church autonomy only protects the ministerial exception. It rejects excessive entanglement, saying cases invoking the Lemon test are now suspect, and it is largely tied to church autonomy arguments. Saying free exercise doesn't apply because this isn't a public benefits issue and neutral and generally applicable laws are allowed, even if they incidentally burden religious

exercise. It says the law is neutral under *Tandon* because--although MFEPA has exemptions for small businesses, employers with seniority systems, certain membership clubs--they apply to both religious and secular employers. It says comparability is based on the amount to which the asserted government interest is undermined. It says it is generally applicable under *Fulton*, because the BFOQ exception is not a system of individualized exemptions. It then applies rational basis review and finds it met. On appeal to the 4th Circuit

iii. PERSPECTIVE: This is another example of the court very narrowly reading church autonomy and free exercise, particularly with the Fulton/Tandon analysis.

f. **Public Employee**: *Sangervasi v. City of San Jose,* 2025 WL 88849 (9th Cir. Jan 14, 2025) (not reported)
   i. Facts: A police officer is objecting to the LGBTQ Pride uniform patch on free speech and free exercise grounds. The district court dismissed his claims because it was government speech and he was speaking as a government employee.
   ii. Legal Analysis: In a memorandum opinion, the Ninth Circuit panel affirmed the dismissal of his claims. Based on *Garcetti*, the government "can restrict speech by public employees made pursuant to their professional responsibilities." In addition, he failed to show discriminatory intent to make the equal protection claim.
   iii. PERSPECTIVE: When there is a clear government speech argument, the best approach is likely to be to request a religious accommodation, not to challenge the government speech decisions directly.

g. **Religious Accommodations and Teacher rights**:
   i. **Accommodation Requests**: *Smith v. City of Atlantic City* (3d Cir. May 30, 2025)
      1. Facts: about the use of Self Contained Breathing apparatuses and the required grooming standards. It has exceptions based on captain permission and an informal exception for more administrative employees like Smith, who was an Air Mask Technician. Smith's beliefs include valuing growing and maintaining a beard based on his understanding of scripture. He requested an accommodation, but was ordered to shave.
      2. Legal Analysis: Interesting combination of judges on the different parts of the opinion. The court reverses the denial of Smith's Motion for a PI. It also reverses the district court's summary judgment for the city on the Title VII accommodation claim and free-exercise claim.

a. Free Exercise: finding that the policy fails general applicability because there are exceptions to the challenged policies (based on *Fulton*). Then applying strict scrutiny, and saying "Strict scrutiny is the appropriate standard in all free-exercise cases failing either Smith's neutrality requirement or its general-applicability requirement." It then says that the government's interest cannot be framed too generally. And "narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest." (quotations removed).
b. Title VII accommodation breach: "good faith is not by itself a cure for a Title VII breach." (19). The court then indicates that in determining undue hardship, the facts and history are relevant, noting that it is telling that the Air Mask Technicians have not been called to engage in fire suppression for decades. Therefore "The City can only theorize a vanishingly small risk that Smith will be called in to engage in…" problematic activities. (20).

3. PERSPECTIVE: This case provides important clarity about the standards applied in Free Exercise cases, and is helpful in emphasizing that the undue hardship standard also must take into account broader circumstances and realities.

ii. **Teacher Rights**: *Polk v. Montgomery County Public Schools*, (D. MD Jan 17, 2025) (on appeal to the 4th Circuit)

1. Facts: a substitute teacher objected to the gender identity guidelines of the school and the gender support plan policy that included using pronouns and not disclosing to parents. Teachers were required to affirm they understood their obligations and would adhere to them, and she refused. She requested a religious accommodation, and they refused. She filed suit and seeks a preliminary injunction. The district moved to dismiss her free exercise and free speech claims and her failure to accommodate claim based on undue hardship.
2. Legal Analysis: 1) On free exercise, the court says she has alleged a religious burden, but that the guidelines are facially neutral and were not enacted to target religion, despite the school district saying in its EEOC statement that it could not tolerate anyone "who holds a traditional religious view of transgenderism and parental authority." (*8). The court said that statement was not

clearly connected to the original adoption. The court also says the guidelines are generally applicable because they treat all teachers the same and no exceptions are allowed. There is discretion on how to apply the policy, but not whether to exempt someone, so rational basis applies and it passes. 2) On free speech, the court applies the three prong test from Garcetti, and concludes that the speech is pursuant to official duties, so the speech claim is foreclosed. It rejects the compelled speech argument as well, noting that the employer still can control its own speech tied to the required professional responsibilities. (*15) 3) on the Title VII claim, the court says "at this stage, it is premature to say that *any* accommodation suitable to **Polk** would be unreasonable." (*19). It therefore allowed that claim to remain.

3. PERSPECTIVE: This is another example of just how far government speech can go and does not give teachers with firm religious convictions that conflict with the message the district is determined to communicate and live out, many options.

iii. **Government Speech**: *Ramirez v. Oakland Unified School District* (ND CA, May 27, 2025)

1. Facts: This is about a kindergarten teacher who refused to use male pronouns for a particular student, based on her Catholic faith, despite parents and the school wishing her to do so.
2. Legal Reasoning: The district court rejected both her speech and free exercise claims. The court said it is not compelled speech, but government speech and part of official duties. The court said the policy is facially neutral, and says the well-pleaded facts to not "plausibly allege hostility."

iv. **Parent and Teacher rights**: *Mirabelli v. Olson,* 761 F.Supp.3d 1317 (S.D. Cal. Jan 7, 2025) (Judge Benitez).

1. Facts: The District Court evaluated the Escondido school district's motion to dismiss. It had claimed that the parents and teachers didn't have harm because the policy was "just a suggestion." But the Teachers have sincere religious beliefs that communications with a parent should be accurate and have a "well founded fear of adverse employment action if they were to violate" the policy and communicate to parents about gender incongruence. (1323). Two of the teachers are not teaching now, but intend to teach in the future, and some other teachers were added in to the lawsuit.
2. Legal reasoning: Denying the motion to dismiss, the judge found adequate pleadings for the teacher's free speech and free exercise

claims because this goes beyond govt curricular speech and impacts the sincerely held teacher beliefs about lies and deceptions that are religiously offensive. It also found the failure to accommodate claim adequately pled, saying that when hardship is attributable to the employer's own animosity to religion, then that cuts against being an undue hardship.

3. PERSPECTIVE: This is helpful because the district court particularly notes tension between the longstanding right of parents to direct the health care and education of their children, and the more recently created state law child rights to privacy and to be free from gender discrimination… He doesn't ignore the tension, but places it front and center.

h. **Vaccine cases**:

i. *Bushra v. Main Line Health, Inc*. (3d Cir. Apr 10, 2025) (not reported)

1. Court affirming dismissal of Title VII suit by emergency room doctor denied religious exemption from Covid vaccine mandate.
2. Saying increase risk shown
3. Saying undue hardship shown with "substantial evidence" and saying no "actual evidence" pointing to an issue of fact to be decided by a jury.

ii. *Rodrique v. Hearst Communications, Inc*., 126 F.4th 85 (1st Cir. 2025)

1. Facts: An employee brought a lawsuit against the employer because he was refused a religious accommodation and terminated for refusing to receive the Covid-19 vaccine. The district court dismissed the lawsuit, saying the employee's objection was not religious, but just a personal medical judgment expressed in religious language.
2. Legal Reasoning: The Circuit did not reach the issue of whether the objection and the claimed religious practice underlying the accommodation request was truly religious, which it said was a "delicate task," but rather jumped to the second part of the test, and said it was adequate to show that the employer had carried the undue hardship defense. It focused on the fact that the employer reasonably relied on objective medical evidence when setting its vaccination requirement. The court also emphasized that the holding was narrow, and focused on whether the employer relied on "competent evidence" in making its decision.
3. PERSPECTIVE: This appears to be narrow, and it is helpful that the court focused on what meets the undue hardship standard, rather than parsing out what are adequate religious beliefs.

6. Free Speech

a. **Professor Speech**: *Kilborn v. Amiridis* (7th Cir. March 2025)
   i. Facts: A tenured professor at University of Illinois, Chicago, school of law was disciplined over the use of statements that were deemed insensitive. He had used an expurgated racial slur in an exam question. Students complained and an investigation was opened, he was found to have violated the nondiscrimination policy, and faced consequences. He sued, claiming violations of free speech and due process. The district court dismissed the complaint. He appealed.
   ii. Legal Analysis: The court said *Garcetti* did not apply. It said the professor's exam questions and in class remarks were protected speech. It then said that the balancing needed to weigh the university's interest in protecting students against the professor's right required more fact development.
   iii. PERSPECTIVE: It is helpful to have the Seventh Circuit clearly say that professors have protected speech, even in the classroom.

b. **Teacher speech**: *Wood v. Florida Dept of Education* (11th Cir., July 2, 2025)
   i. Florida statute, Fla. Stat. §1000.071(3), that says a teacher may not use preferred pronouns with students in K-12 if it doesn't correspond to sex, prohibits a trans teacher, Wood, from using her chosen pronouns with her high school students. She challenged the statute based on free speech and sought a PI. The DCt granted the PI and said she was likely to succeed on the merits of her free speech challenge.
   ii. Legal Reasoning: the 11th Circuit reversed, saying teachers do have some first amendment rights, but stating that there is a "private-citizen/ government-employee tension" that requires a two-step process based on Pickering and Garcetti: 1) asking if the teacher is speaking both as a citizen (rather than as govt employee) and about a matter of public concern (rather than private), and 2) asking if her interests outweigh the state's interest in "promoting the efficient delivery of public services." The Court then says that here the teacher fails the first prong because she is speaking as a government employee and acting "pursuant to her official duties" when she "addresses her students within the four walls of a classroom—whether orally or in writing." It examined other circuits (albeit based on quite wide ranging fact patterns), and interpreted "in class" and "carrying out duties" broadly to give greater authority to the state and the school over the teacher.
   iii. Dissent by Judge Jordan sees this as the state trying to enforce "speech orthodoxy" and involving significant overreach. He notes that preferred pronouns are "significant markers of individual identity" that "exist

outside of, and do not depend on, the school or the government for their existence." He notes there should be a limit to what is "curricular" and that this broad reading could lead to "dangerous misuse."

iv. PERSPECTIVE: this case could have significant consequences for teachers, with different implications in different parts of the country. This is expanding the concept of state/school control over curriculum to include almost complete control over teacher interactions with the kids in the classroom. It feels very overbearing.

1. This hugely expansive reading of government speech could shrink the First Amendment rights of teachers even more than Garcetti already did. It could allow a state or school district to prohibit any mention of personal faith even in individual conversations with students.
2. Short sighted, as are many things in the culture war right now.

c. **Teacher speech**: *MacRae v. Mattos*, 106 F.4th 122 (1st Cir. 2024)

i. Facts: a teacher at a high school in Massachusetts was terminated due to controversial memes from her personal TikTok account that were seen as anti-trans. They were from before she was hired but did create actual controversy at the school among students and staff, and brought media attention. The school said it hired her when it did not know about the posts, but when it found out, it said her posts violated the school's "core values." It also said that continuing to keep her as an employee "in light of [her] social media posts would have a significant negative impact on student learning."

ii. Legal Analysis: The district court found for the school district, deferring to its predictions of disruption. The Court affirmed the district court, using a combination of analysis from *Garcetti* and *Pickering*, and then bringing in the tradition of deference in the K-12 school setting. In the resulting balancing test, it weighed heavily the interest of the government in "promoting efficiency in its services."

1. The court said *Garcetti* is fine to apply because the speech was *relevant to the government work*, and was close in proximity to the hiring date. It said it was using the "mode of analysis for public employees' First Amendment retaliation claims.
2. It then goes on to describe that her First Amendment interest "weighs less than it normally would" because she speaks on "hot-button political issues in a mocking, derogatory, and disparaging manner." And saying that the school's interest "in preventing disruption to the learning environment" is high here. (137). Despite there being no actual disruption documented, the court said the

potential is not "mere speculation" but rather a reasonably forecasted "prediction of disruption" based on the record.

iii. PERSPECTIVE: this is problematic because it feels like a Heckler's Veto, justifying a decision based on how others respond to it or how others might respond to it, and then claiming it is not personal, but just reasonable forecasting. It can effectively lessen the First Amendment protections in the school setting when things involve "hot-button political issues."

d. **Student Speech** case (Cert denied): *L.M. v. Town of Middleborough* (1st Cir. 2024), Cert denied May 27, 2025 (with Alito and Thomas dissenting from denial of cert, and saying that the First Circuit "employed a vague, permissive, and jargon-laden rule that departed from the standard this Court adopted in *Tinker*." They said it should have been reviewed because of its viewpoint discrimination and because of the need to clarify the meaning of material disruption articulated in *Tinker*).
   i. Facts: "There are only two genders" t-shirt that the school administrators told the student to remove because it was disruptive.
   ii. PERSPECTIVE; there is a lack of consistency in how the *Tinker* standard is applied in the different circuits, and the Supreme Court will eventually need to bring more clarity to how to go about the analysis in relation to the "substantial disruption" principle.

e. **College student speech**: *Doe v. University of Massachusetts*, No. 24-1458 (1st Cir. July 25, 2025)
   i. Facts: 4 female Ras reported a graduate student male for sexual comments and hugs. He was found responsible for "sexual misconduct," placed on probation, and banned from campus housing.
   ii. Legal Reasoning: saying no evidence that his awkward conversations actually disrupted the work or educational environment. Applying *Tinker* to the public university setting (stating that setting is less susceptible to speech harm), it says the disruption standard has to mean something, and the phrase about the "rights of others" must be about bullying or harassment, not feeling awkward and uncomfortable. Yet granting qualified immunity because officials could not have known.
   iii. PERSPECTIVE: while I don't think *Tinker* should apply in the university setting, it is helpful to at least see the 1st Circuit confirming that offensive speech is still protected on college campuses. Sometimes, when people share religious beliefs, they are unwelcome and taken the wrong way, but perhaps this logic can protect against overbearing reactions to that as well.

f. **Government speech**: *Nussbaumer v. Secretary, Florida Dept of Children and Families* (11th Cir. Sept 4, 2025): Rejecting free speech and free exercise

challenges to Florida's requirement for becoming certified as a provider in the state's batterers' intervention program (a program for rehabilitating domestic abusers).

i. Facts: Nussbaumer was a provider, but then Florida started vetting providers for DCF certification (enforcing the rules developed by DCF, which it was given authority to create by Florida law. These regs were issued in 2022 and included specific content requirements). He was then stripped of certification, unqualified because he used faith-based ideology tied to a particular religion contrary to the rules. Nussbaumer sued, claiming the reg was invalid under the First Amendment.

ii. Legal Reasoning: The First A restricts regulation by govt of private speech. But it does not apply when it is govt speech. In deciding if it is govt speech, the 11th Cir specifies 3 factors: "While there is no precise test, courts consistently look to three factors: "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." Shurtleff, 596 U.S. at 244; see also Cambridge Christian Sch., Inc., 115 F.4th at 1288." The Court then said this is government speech, and the government may decide its contours. This is instructional programming determined by the government, not regulating professional activity. Private parties taking part in the design and propagation doesn't change the governmental nature. It is limited to programs "credentialed by the state," such that the government keeps control over the expression.

1. "The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with he religious beliefs of particular citizens."
2. The Govt can insist on secular presenters – a private actor may not "use the First Amendment as a sword to morph the government's message into his own."

iii. PERSPECTIVE: This case clarifies that when the government creates a program, it will often be its own speech, even if it invites private parties to help implement it, when it has a certification system and dictates the content they must present.

g. **Government speech in education**: *Walls v. Sanders*, 144 F.4th 995 (8th Cir. July 16, 2025)

i. Facts: Students allege that an Arkansas law (§16 of the LEARNS Act, at Ark. Code. Ann. §6-16-156) violates their rights under the First Amendment Free Speech Clause because they claim it prevents their teachers from giving them instruction about CRT. The district court said it

violated their "right o receive information" and entered a PI. Arkansas appealed, arguing the Free Speech Clause doesn't allow students to compel the govt to provide certain classroom materials because it is government speech.

ii. Legal Reasoning: The 8th Circuit agrees that it is government speech, and reverses the district court's PI. The First Amendment does not allow others to restrict government speech. The "right to receive information" means that the government may not prohibit a listener from hearing a message, but it does not mean the government itself has to provide a message it does not want to say. (1002). The government is accountable to its citizens for its speech through elections. (1002). There are some limits on government speech and some bases for constitutional challenges, like the Establishment clause, but the Free Speech Clause can't be used that way. (1003). "Arkansas has substantial, if not absolute, discretion in selecting what materials and information to provide in its public school classrooms." The court analyzes the idea of imposing a viewpoint discrimination limitation on the government speech doctrine, but doesn't find it supported by recent Supreme Court jurisprudence. (1005).

iii. PERSPECTIVE: This is a very interesting dive into the limits of government speech, concluding that there aren't many, other than the political process.

h. **Government speech in education**: *Woolard v. Thurman* (9th Cir. 2025)

i. Facts: CA authorizes charter schools at Cal. Educ. Code § 47600 et seq. There is a charter school option for parent provided independent study programs, described at §51747.3, §51747.5(a), where parents enter into contract with the state, and the state specifies the objectives, how the work will be evaluated, and provides "appropriate materials and services necessary." See id. §§ 51746, 51747(g)(3); Cal. Code Regs. tit. 5, § 11700(i). It also prohibits "sectarian doctrine" being taught as part of the schooling program. § 47605(e)(1). These programs are "overseen by public 'chartering authorities' that approve and supervise these charter schools" with greater legal constraints than apply to private schools. California separately allows private school homeschooling options with no curricular requirements and much lower reporting standards. Cal. Educ. Code §48222. Parents brought suit challenging the denial of their request to purchase sectarian curriculum to use as a First Amendment violation, claiming that the program is more of a "generally available public benefit in aid of homeschooling" that should not exclude based on religious character.

ii. Legal Reasoning: The 9th Circuit rejected the free exercise claim, saying the state can condition its program on the use of secular curricula. Not all burdens on religion "fall afoul of the Free Exercise Clause." Because this is a public school under state control, "The extensive legal requirements applicable to the defendant charter schools' independent study programs make the programs sufficiently public to defeat Plaintiffs' free exercise claim." The 9th Circuit also rejected the free speech claim, saying the curriculum qualifies as government speech as an "expression of government policy." It did not create a limited public forum, so no additional scrutiny should be applied.

iii. PERSPECTIVE: It can be tricky to draw the line between what is a public benefit and what is just state speech. The Charter school area is a complex area for that to play out.

i. Creative Expression in Work: *Carpenter v. James* (2d Cir. July 12, 2024; D. NY May 22, 2025)

i. Facts: Photographer who does custom artistic wedding photography brought a pre-enforcement challenge against the state public accommodations law. She participates in unique blogging and shapes her work for her clients in unique ways.

ii. Legal Analysis: The Second Circuit remanded for further fact finding in light of *303 Creative*, asking if her services "constitute expressive conduct." It noted that the expressive activity would have to be her own, not that of her clients. It rejected her other claims (free exercise, expressive association, and vagueness). The District Court then (reluctantly) found that *303 Creative* did apply, and that her particular activity was not an "ordinary commercial product" but "customized and tailored speech" that was focused on more than just a "passive memorialization of events," which would not be expressive activity. Her high level of customization and tailoring, guided by her artistic and moral judgment, made it expressive.

iii. PERSPECTIVE: This is a helpful clarification of how *303 Creative* does apply to protect the expressive choices and work of certain types of artists, even those who offer their services for hire.

j. **Freedom of the Press**: *Associated Press v. Taylor Budowich* (D. DC April 8, 2025)

i. Facts: At the district court level right now. AP refused to update the Gulf of Mexico's name in its Stylebook. The President issued restrictions specifically against AP's access to the White House. AP was "systematically and almost completely excluded." (9)

ii. Legal Analysis: in evaluating the request for a PI, the judge focused on the freedom of the press and the history of that right. He said there was a clear understanding that the First Amendment was part of "safeguarding their natural right to heap honest criticism upon the Government without fear of official reprisal." (16). He then reviewed the forum doctrine, noting that some restrictions are fine, but even in a nonpublic forum, the government cannot suppress expression because of viewpoint. Here there is evidence that it is because of viewpoint. The judge said the choice of access was not government speech.

iii. PERSPECTIVE: This is important because, as with many areas of First Amendment jurisprudence, we need to take the long term view and fight for the right of diverse opinions to be free to express their viewpoints and to speak against the government.

k. **Government speech re libraries**: *Little v. Llano County* (5th Cir. May 23, 2025) (en banc)

i. Facts: challenge to a public library's removal of books in Texas, after it removed 17 books because of racial and sexual themes. Plaintiffs claimed a right to receive information under the Free Speech Clause.

ii. Legal analysis: The First Amendment does not stretch the right to receive information this far. No standard can be agreed upon to determine whether a book may be removed. A "library's collection decisions are government speech and therefore not subject to Free Speech challenge." The library does not speak through the books themselves, but by how it selects. It curates, like a museum. This is not about burning or banning books, but about curating a collection.

1. The different sides characterize the basis for removal differently. The district court found that "substantial motivation" for removing the books was to prevent access "to particular views" and issued a preliminary injunction forcing reshelving of the books.
2. A divided panel affirmed, agreeing that there was a right to receive ideas, that the motive was to deny access to ideas, and that it was not government speech.
3. The En banc court finds there is not a right to receive information that is violated here, and overrules its previous decision in *Campbell*. It notes that three is sometimes a right to not have the government burden their right to receive another's speech, but the government is not required to provide the information itself. It holds that the government may not prevent you from receiving a book, but it does not have to provide that book in its public library. To allow otherwise is to invite chaos (challenging any purchase as

well), and no clear standards for determining it can be found. In illustrating the problem of drawing the line, the en banc court says "The problem is obvious: deeming a book 'inaccurate' or 'unsuitable' is often the same thing as disliking its 'content' and 'viewpoint.' Judges might as well flip a coin." Curating will always involve some viewpoint discrimination.

4. In looking at government speech, the en banc court uses *Shurtleff* analysis and says forum analysis is not applicable to a library's collection. The court concludes that "People can protest what the government says, but they cannot sue to make the government say what they want." It also cites *Hurley* and *Summum* when noting that editing, crafting and presenting certain collections is speech.

iii. PERSPECTIVE: This is an interesting case because it could be liked or disliked by either side based on who has the power over the curating. But it tries to draw the line by saying, the government may not prevent access to certain ideas, but it may curate its library collection. It could have implications in the public school teaching decisions arena as well.

l. **Foster Parents Rights**: *Bates v. Pakseresht* (9th Cir. 2025) (holding that Oregon policy denying a prospective adoptive parent certification, completely denying her the ability to be a foster parent, due to her religious objections about supporting gender transitions triggered strict scrutiny for her free speech claims. Remanding).

i. Facts: Bates adoption application was denied based on Oregon's policy, Oregon Admin R. §413-200-0308(2)(k), requiring foster parents to be affirming and agree to support any child related to their SOGI identity. The state has certain requirements, but Bates sees them as "incompatible with her religious beliefs." She says she will "love and support any adopted child," but could not agree to everything. She was found ineligible, and was sent a final determination letter. She filed suit under §1983. The District Court said no free exercise claim because the rule was neutral and generally applicable. It said no free speech claim because, although it did compel positive speech and strict scrutiny applied, the court found it met because of the strong interest to provide the support and care that LGBTQ+ children require.

ii. Legal Reasoning: The 9th Circuit acknowledges the tension, stating "This case lies at the crossroads of competing visions of family and faith, for which people of goodwill in our country can have different perspectives" (22). It says "*Adoption is not a constitutional law dead zone. And a state's general conception of the child's best interest does not create a force field against the valid operation of other constitutional rights.*"

1. Applying strict scrutiny based on free speech because it compels speech based on both content and viewpoint. The policy requires speech to "align with the state's perspective on these intensely debated issues in our society." (27) The speech regulated is *not* just "incidental to conduct." The argument would have been stronger if it just outlawed harassment or denigration. Nor is this just a policy choice that the state is allowed to make with no limits. While it is a licensing situation, similar to state's rights to regulate "professional conduct," it is not just regulating conduct. A state cannot reduce First Amendment rights "by simply imposing a licensing requirement." (34).
2. Applying strict scrutiny based on free exercise claim. There is a clear burden, because it is requiring her to promote something contrary to her sincerely held religious beliefs. It is not enough to claim she can keep holding her views, as long as she doesn't act on them related to fostering. The court says this "reflects an incomplete understanding of the Free Exercise Clause," which protects "*religious speech and practice as a way of life and not merely as private thought.*" (36). The policy is not neutral toward religion, even if it appears so on its face, particularly because the materials even speak of religion "as an oppositional viewpoint…" The fact that "one can imagine non-religious objections" does not save it (44). The policy is not generally applicable either, seeing this as related to neutrality. Even though there is not an explicit carve out, the state has clear authority to decide here on an "ad hoc basis" what it means to comply with the policy (48). In doing the strict scrutiny analysis, the court says, while there is a compelling interest, this policy is not narrowly tailored because there are other options that have not been explored besides precluding her completely from adopting because of her religious objections.
3. The dissent worries that this makes Oregon "powerless to protect children."

iii. PERSPECTIVE: Powerful to see the language clarifying that these constitutional rights involve meaningful limits on the state. This goes to the area of state licensing, and makes clear that it can't be a space that the state carves out where it does not have to comply with the First Amendment and can just require full conformity no matter what. This is about access to employment, access to volunteering, access to benefits for people who have sincerely held religious beliefs. It is complex and full of tension, but it is nevertheless an important marker!

m. **Challenges to Executive Orders targeting Law Firms** (a couple examples):
    i. Perkins Coie LLP v. U.S. Dep't of Justice, 783 F.Supp.3105 (D. DC, May 2, 2025)
    ii. Wilmer Cutler Pickering Hale and Dorr, LLP v. Executive Office of the President, 784 F.Supp.3d 127 (D.DC 2025).
    iii. Overview:
        1. Finding ripeness and standing and plausible allegations of First Amendment Violations.
        2. Significant economic injury. Finding likelihood of success on merits of claims that the EOs were motivated by retaliation for First Amendment protected activity.
        3. One court saying the *means* used by the Executive may be scrutinized, even if the Executive goals and policies may not be. *Process* must have limits. (Wilmer Cutler)
            a. Noting there is a "causal link between the protected speech and the retaliatory conduct." There is also evidence that it involves targeting disfavored viewpoints.

7. Expressive Association

a. *CompassCare v. Hochul*, 125 F.4th 49 (2d Cir. 2025)
    i. Facts: Religious employers sued NY officials under §1983 claiming the NY law prohibiting employment decisions based on employee reproductive health decisions infringed on their free speech, expressive association, and free exercise rights, based on their particular beliefs and mission that is against abortion, contraception, and certain types of sexual relations.
    ii. Legal Analysis: Using the three part test in *Dale*, the second circuit indicates that expressive association applied, partly based on the 2023 2d Cir. case, *Slattery v. Hochul*. Wanting to cabin expressive association so that it doesn't end up justifying unlawful discrimination, the court focused on the limiting principle that, because the organization was mission-based and advocated for a certain cause or set of beliefs, it "could plausibly allege" that the employee choice in that case "would impair its ability to express its message" and might threaten "the very mission of the organization." In that case, the law is not imposing "incidental limitations" on association rights, but rather "severe burdens." (60-61).
        1. Notably, the court did not find compelled speech, but just focused on the expressive association.
    iii. PERSPECTIVE: This is an important case clarifying what "expressive association" can cover. It helpfully expands it to some employment

scenarios, not just "voluntary associations" as prior cases mostly addressed.

b. *Saadeh v. NJ State Bar Ass'n* (NJ App., Dec 20, 2024)
    i. Facts: This case is about a State Bar association that has leadership preferences based on protected statuses. It is considered a private voluntary association.
    ii. Legal Analysis: The court applied *Dale v. Boy Scouts* (2000), saying the Bar Association "qualifies as an expressive association, and…compelling it to end its practice of ensuring the presence of designated underrepresented groups in its leadership would unconstitutionally infringe its ability to advocate the value of diversity and inclusivity in the Association and more broadly in the legal profession." The court says there is a compelling interest in eliminating discrimination, but that interest "*does not justify the 'severe intrusion' of prohibiting the Association from expressing views protected by the First Amendment—here, the value of demographic diversity in the legal profession and in its own leadership. The Association cannot be forced to send the message 'that it no longer cares, or cares as much, about diversity in general or about assuring access to leadership positions for underrepresented groups in particular' by ending its practice of reserving" seats on its Board of Trustees to ensure diversity…*
    iii. PERSPECTIVE: this is a helpful perspective on the value and import of expressive association. It certainly strengthens the idea that an organization may select its leaders as an act of expression and living out its convictions and beliefs, and that such expression is protected.

c. *Olympus Spa v. Armstrong* (9th Cir. May 29, 2025) (broadly about the First Amendment and the WLAD)
    i. Facts: Two Korean spas that have run for two decades are immigrant run and practice an ancient Korean tradition (going back many hundreds of years) involving patrons being naked and undergoing deep tissue scrubbing of their bodies in communal saunas. They are also grounded in a Christian belief about modesty between men and women. They want to protect their patrons comfort and sensibilities, and so prohibited transgender females that still have biological male body parts. One trans female complained about the policy to the state of Washington, so the Washington State Human Rights Commission investigated and accused them of discrimination and threatened referral to the AGs office for prosecution. The spa sued on First Amendment grounds, and the district court dismissed the spa's complaint with prejudice, saying on free speech that there was no compelled speech because it was "incidental to the Spa's

conduct." On free exercise, it said WLAD was neutral and generally applicable, and on association, saying it did not give rise to protection.

ii. Legal Analysis: This focuses on the application of the Washington Law Against Discrimination (WLAD) and whether the spas violated its terms based on discrimination against transgender individuals, which the law incorporates into its definition of sexual orientation.
    1. The majority says this is not a First Amendment issue.
    2. It points to WLAD's governing regulations that limit gender-segregated facilidies" from excluding based on gender identity.
    3. On free speech, the court says this merely has an incidental effect on protected speech, and requiring the policy to be re-written to comply with law fits into that like requiring an establishment to remove its "White people only" sign. (15-16). The state objected to the unlawful practice, not the message being conveyed. The state did not require the spa to change its website or its articulation of its viewpoints. It therefore applies "intermediate scrutiny," and determines that it furthers an important governmental interest "unrelated to the suppression of free expression." It says the entrance policy is "at most, only incidentally expressive."
    4. On free exercise, it says the law is neutral and generally applicable and incidentally burdens religion, so is not subject to strict scrutiny. There is no clear hostility going on either. And the court says it clearly does not fail rational basis review.
    5. On free association, the Spa says WLAD interferes with "both the intimate and expressive association between women at the Spa." The court says it is not an intimate association because there is an entrance fee and no consistent deep attachments among customers, and willingness "to undergo certain traditional Korean services" is not adequate. The court says it is not an expressive association because "the Spa and its patrons do not engage in expressive activity." The interactive aspects involve do not change that, and it is not seeking to "transmit…a system of values," like in *Dale*.

iii. The dissent by Judge Lee described the spa and the facts in more detail and detailed an argument for why the anti-discrimination statute does not cover transgender status in this manner. WLAD has "sexual orientation" listed, but not "gender expression or identity" as a protected class, though it is mentioned in the definition of sexual orientation. He uses rules of statutory construction and points out that the spa does not restrict based on sexual orientation, and even allows post-operative transgender women, but

just excludes male genitalia. He says *Bostock* does not apply to the interpretation of WLAD, which has different definitions.

1. The dissent also wisely points out that this case "is about power—which groups have it and which do not." He points out two factors: 1) that Asian Americans in Washington have been disfavored, and this is another example and 2) that these are politically motivated actions.

iv. PERSPECTIVE: This case is problematic because it shows how far down the rabbit hole we really are in relation to convoluted legal analysis that loses sight of the unique identities and practices of people and associations. This is exactly why the association right that is trapped in an expressive-only framework is inadequate to protect communal values that are important and meaningful for certain groups.

8. RFRA

a. *Potter v. District of Columbia*, (DC Cir., Jan 28, 2025)
   i. Facts: Suit by DC firefighters about regulations restricting beards worn for religious reasons during Covid, based on a previous injunction issued in 2007 after a RFRA-based lawsuit. The firefighters were transferred to administrative duties that resulted in less opportunities and options than field duty provided. They claimed it violated the previous 2007 injunction. They were restored to roles, but settlement negotiations failed and they filed a motion for civil contempt. The district court denied the contempt motion, stating that the Department "acted in a reasonably cautious way" and it appeared that damages would likely be de minimis.
   ii. Legal Analysis: this is a civil contempt motion to enforce an injunction protecting free exercise rights under RFRA. The Court said it had power to enforce compliance with lawful orders. It said district courts "do not have discretion to overlook a proven violation, absent a recognized defense." So the party claiming contempt should get a ruling as to whether the defendant is in contempt, and "neither good faith nor lack of willfulness is a defense to civil contempt." Therefore, the DC Circuit said "[t]he district court applied the wrong legal framework for assessing civil contempt."
   iii. PERSPECTIVE: this isn't really about RFRA, but more about how civil contempt works. But it is helpful to see the clarity about how injunctions must be enforceable.

b. RFRA drug case: *United States v. Safehouse* (3d Cir. July 24, 2025)
   i. Facts: Nonprofit org seeking to address opioid abuse with overdose prevention services, including supervised illegal drug use. It uses harm

reduction strategies, including giving sterile syringes and offering to test drugs for fentanyl. Although the 3d Circuit said in 2021 that it violates federal law to offer supervised illegal drug use, Safehouse is now claiming that shared religious belief in the value of human life motivates it to provide these "evidence-based public-health interventions" and that the government restrictions "burden its religious exercise."

ii. Rejected by the district court, which said RFRA and free exercise were not at issue because it is not a religious entity. But the 3rd Circuit reversed, saying an entity, even if non-religious, can claim to be exercising religion. Based on the language of RFRA, the court may not require "persons" to mean "religious entity."
    1. Not deciding the merits of the issue at this point.

iii. PERSPECTIVE: helpful clarification that RFRA protects more than religious entities.

9. RLUIPA

a. *Johnson v. Jefferson Parish Sheriff Office* (5th Cir., March 25, 2025)
    i. Facts: A Rastafarian inmate refused to cut his hair for religious reasons, and was refused the opportunity to go into the yard, use the phone, or buy items from the commissary. He was also placed in an unsanitary unit with toxic mold. The district court dismissed the suit.
    ii. Legal Analysis: the circuit reversed and remanded, saying he had alleged a substantial burden on his religious exercise. Even though he was allowed not to cut his hair, he should not have to face severe punishment in order to exercise his religion.
    iii. PERSPECTIVE: It is important that the court here recognizes that the burden is not just in being directly prevented from doing the religious practice, but also in giving other limitations because of it.

10. Parent Rights

a. *Foote v. Ludlow School Committee* (1st Cir. Feb 18, 2025)
    i. Facts: §1983 case brought by parents with child at a middle school in Massachusetts claiming school's protocol requiring staff to use students' name and pronouns without notifying parents violates their fundamental parental rights under the 14th A Due Process Clause. The child was doing a school assignment and started getting LGBTQ theme suggestions, then began to question sexual orientation and gender identity and transitioned at school. School followed their "Ludlow's Protocol" and the 2012 guidance from the state. It is an unwritten policy giving the child authority to decide how and when their parents will be notified about their social

transitioning. Parents claim it is mental health treatment, but school says it is just fostering inclusion and making the school safe for all.

ii. Legal Reasoning: The 1st Circuit does extensive analysis on how to examine Substantive due process claims, looking at: 1) if the govt action is executive or legislative, 2) whether a fundamental right is involved and the conduct restricts that right, and 3) if the govt conduct passes constitutional scrutiny.

iii. Applying this standard, it concluded 1) that the govt action was legislative (involving policy), so it gets more than a "shocks the conscience" analysis. 2) It found no fundamental right was actually restricted for several reasons. First, because it read the parental right as involving choice about medical treatment, which this was not. Second, it found that the right to direct upbringing did not give them the right to control "a school's curricular or administrative decisions," which is all this is (351). The parents can choose to place their child in a different school, but the school gets to "maintain what it considers a desirable and fruitful pedagogical environment." (352) Third, it said the protocol was not deceptive or depriving them of information they needed because it involved "deference to a student's decision" and therefore lacked "coercive conduct" by the school like was present in some other cases that infringed on the bodily integrity of a child without informing parents. (353-54). 3) It found that—applying rational basis review because there was no restriction of a fundamental right—it was rationally related to the legitimate state interest of "cultivating a safe, inclusive, and educationally conducive environment for students." (356)

iv. PERSPECTIVE: This continues the unfortunate trend of reading parents' rights related to public schools very narrowly. ADF filed a cert petition in July 2025.

b. *Lavigne v. Great Salt Bay Community Sch. Bd*. (1st Cir. July 28, 2025)

i. Facts: A social worker at a public school in Maine gave a 13 year old a devise to flatten her chest and helped her to go by another name and pronouns. The parents found the chest binder and met with the Principal, who said no policy had been violated. The parent spoke at the board meeting, saying trust had been broken. The district said their first priority is "a safe, welcoming and inclusive educational environment." The mother sued.

ii. Legal Reasoning: The Court did not reach the constitutional question because it found a loophole to jettison the case. It said the Board could not be held liable because the mother did not plausibly allege they had a custom or policy in place of withholding this type of information. The

employee acted, but not really pursuant to policy, so there is not municipal liability. The decision not to fire her does not prove anything.

iii. PERSPECTIVE: It can be difficult for these types of cases to get situated correctly to change the law. Partly because these parents acted to protect their child before the policy was fully in process of being applied.

c. *Mead v. Rockford Public Sch. Dist*. (WD MI, Sept 18, 2025)

i. Facts: parents challenge to school policy on non-disclosure of child's social transitioning of gender. School used female name and pronoun when talking to parents, but masculine name and pronouns at school.

ii. Legal Reasoning: DCt said no violation of free exercise rights—parents were not being "coerced or compelled into acting "inconsistent with their religious beliefs." School using preferred pronoun doesn't force parents to do so… Therefore policy is "neutral and generally applicable" and subject only to rational basis review. It said yes, there is a due process claim plausibly alleged because the school conducted "psychosocial intervention" to treat the gender dysphoria possibly in violation of their right to direct the child's healthcare.

iii. PERSPECTIVE: this continues to be a messy area.

LEGISLATION:

1. Concerns about RFRA carveouts:

a. The Religious Freedom Restoration Act ("RFRA") is a federal civil rights law that protects *all* Americans' religious liberty. It is one of the most important religious freedom statutes in the nation's history and passed Congress nearly unanimously in 1993.

b. Without RFRA, religious practice can be stifled, harming the religious freedom that is one of our constitutional first freedoms. Congress ensured that RFRA applies across all federal law. It always applies unless Congress were expressly to say in a particular law that it does not,[3] which Congress has never done since enacting RFRA 32 years ago.

c. We therefore want to ensure that Congress does not waive any federal statute from RFRA.

d. Some bills do have such waivers in them.

2. Other federal efforts:

a. Equal Campus Access Act

b. Religious Workforce Protection Act

3. State Bills:

a. State RFRAs

b. State Campus Access Bills

EXECUTIVE ORDERS:

This Trump Administration is focused on accomplishing its goals largely through executive action. They produced many Executive Orders in the early months of the Administration. I will just mention a few here that could have an impact on religious freedom and expression.

- EOs impact what regulatory compliance looks like, when investigations will be started, how they will be conducted, and what enforcement decisions and patterns will be. It also impacts contract administration, contract terminations, and how claims for financial recovery might work. It is unclear how to challenge agency actions or how to prepare for enforcement risks when the framework and climate are changing so quickly.
- This impacts religious organizations that contract with the government too, particularly if they have priorities that differ from those of the administration.
- Here is a list of EOs listed in the Federal Register: https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025

Here are some that we believe may be relevant to religious freedom (in either positive or negative ways, short or long-term), or related to free speech and that could impact future speech of religious organizations. Including them in this list does not imply that CLS either approves or disapproves of their content:

1. EO 14148: Initial Rescissions of Harmful Executive Orders and Actions, and EO 14174: Revocation of Certain Executive Orders, and EO 14236: Additional Rescissions of Harmful Executive Orders and Actions
    a. Revoking a large list of prior executive orders, [some of these revocations are helpful to religious freedom. Overall, however, this list demonstrates the EO ping-pong that can deeply affect how the public interacts with the federal government, for better or worse].
2. EO 14149: Restoring Freedom of Speech and Ending Federal Censorship
    a. Stating a commitment to free speech for US citizens.
3. EO 14159: Protecting the American People Against Invasion
    a. Many ministries that serve immigrants may be impacted by the way this order is written and being carried out because of how it impacts those they serve and seek to provide for.
4. EO 14160: Protecting the Meaning and Value of American Citizenship
    a. Many Christians object to the way this could be seen as devaluing those born in this country who have always previously been considered citizens.
5. EO 14163: Realigning the United States Refugee Admissions Program

6. EO 14168: Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
7. EO 14170: Reforming the Federal Hiring Process and Restoring Merit to Government Service
8. EO 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity
9. EO 14182: Enforcing the Hyde Amendment (revoking 2 Biden Eos – 14076 and 14079)
10. EO 14184: Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate
11. EO 14187: Protecting Children from Chemical and Surgical Mutilation
12. EO 14188: Additional Measures to Combat Anti-Semitism
13. EO 14190: Ending Radical Indoctrination in K-12 Schooling
14. EO 14191: Expanding Educational Freedom and Opportunity for Families
15. EO 14192: Unleashing Prosperity through Deregulation
16. EO 14202: Eradicating Anti-Christian Bias
    a. Stating that it is responding to how "the previous Administration engaged in an egregious pattern of targeting peaceful Christians, while ignoring violent, anti-Christian offenses."
    b. Among other things, it mentions the efforts of the Biden administration to undue the regulation from 2020 that sought to protect religious student organizations on college campuses.
    c. It established a "Task Force to Eradicate Anti-Christian Bias" within the DOJ with members from other Departments as well.
17. EO 14205: Establishment of the White House Faith Office
    a. States: "The executive branch is committed to ensuring that all executive departments and agencies (agencies) honor and enforce the Constitution's guarantee of religious liberty and to ending any form of religious discrimination by the Federal Government."
18. EO 14214: Keeping Education Accessible and Ending COVID-19 Vaccine Mandates in Schools
    a. Including the statement: "(a) The Secretary of Education shall as soon as practicable issue guidelines to elementary schools, local educational agencies, State educational agencies, secondary schools, and institutions of higher education regarding those entities' legal obligations with respect to parental authority, religious freedom, disability accommodations, and equal protection under law, as relevant to coercive COVID-19 school mandates."
19. EO 14216: Expanding Access to In Vitro Fertilization
20. EO 14242: Improving Education Outcomes by Empowering Parents, States, and Communities.
    a. Focused on reducing the Department of Education and restricting DEI-focused expenditures.

21. EO 14250: Addressing Risks from WilmerHale and EO 14246: Addressing Risks from Jenner & Block and EO 14237: Addressing Risks from Paul Weiss, etc.
    a. Focused on preventing "activities that are not aligned with American interests" and targeting a particular private actor.
22. EO 14291: establishing the Religious Liberty Commission