

Religious Freedom Decisions by the U.S. Supreme Court in the 2024-2025 Term and Others Percolating Up

I. Religious Freedom Decisions by the Court in the 2024-2025 Term

A. *Catholic Charities Bureau, Inc v. Wisconsin Labor & Industry Review Comm'n*

1. 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?

2. Background

"Wisconsin exempts from its state unemployment tax system certain religious organizations that are 'operated, supervised, controlled, or principally supported by a church or convention or association of churches' and that are also 'operated primarily for religious purposes.' Petitioners are Catholic Charities of the Diocese of Superior and several sub-entities. Although all agree Catholic Charities is controlled by a church—the Diocese of Superior—the Wisconsin Supreme Court held that Catholic Charities is not 'operated primarily for religious purposes' and thus does not qualify for the tax exemption. Specifically, the court held that Catholic Charities' activities are not 'typical' religious activities because Catholic Charities serves and employs non-Catholics, Catholic Charities does not 'attempt to imbue program participants with the Catholic faith,' and its services to the poor and needy could also be provided by secular organizations."¹

CLS' amicus brief in support of Catholic Charities argued the unconstitutionality of the state supreme court's test for qualifying for a tax exemption: whether the activities of a faith-based social service provider that are motivated by religion nevertheless are uniquely and sufficiently religious to satisfy a secular court. If it is true that "the power to tax is the power to destroy," then the First Amendment does not allow judges to apply their own "objective" test for what qualifies as sufficiently "religious" to statutorily qualify for tax exemption. The state court here eviscerates the First Amendment church autonomy doctrine, saying that the petitioners are not sufficiently religious because secular people can provide the services too and because petitioners do not hire only Catholics or proselytize for Catholicism or distribute religious materials. This test would shrink the scope of constitutionally protected religious exercise to a much smaller scope than the church is called to advance.

3. Holding

On June 5, the Court held unanimously that Wisconsin's statute, as interpreted by the Wisconsin Supreme Court, facially violates the First Amendment.

¹ Excerpted from Petition for Writ of Certiorari.

4. Unanimous Opinion (Sotomayor)

Relying on *Larson v. Valente*, the Court held that 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.

5. Legal Significance

Government ventures onto thin ice when it under inclusively defines what makes an organization sufficiently "religious" to qualify for a government benefit or exemption. When government is trying to avoid burdening religious exercise, of course it is legitimate to try to draw boundaries that help divide the sincere from the phony, genuine religions from those who would seek to exploit exemptions. Hopefully, the case shines a bright light (9-0 decision!) for those who draw definitional boundaries as to who qualifies for an exemption. Going forward, they should consult the faith community and learn what defines and animates religious ministries.

B. Roman Catholic Diocese of Albany v. Harris

1. Issue

Does strict scrutiny under the Free Exercise Clause apply to a state law that exempts only some religious employers based on the state's definition of religious criteria?

2. Background

In this case, a New York state regulation requires employers to provide health insurance that covers abortion, narrowly exempting only religious nonprofits that have the "purpose" of "inculcating . . . religious values" and that primarily hire and serve those of the same faith. The Supreme Court previously reversed and remanded this case for reconsideration in light of *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). The New York Court of Appeals again ruled against the Diocese, upholding the state's selective religious exemption despite *Fulton*'s "general applicability" test.

3. Court Action

Granted certiorari, vacated decision below, and remanded for reconsideration in light of *Catholic Charities Bureau v. Wisconsin* (I.A. above). See I.A.5 above for legal significance.

C. Mahmoud v. Taylor

1. 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?

2. Background

The Montgomery County (MD) Board of Education wove into the lesson plans for pre-K and elementary-aged children books that promote same-sex marriage and transgender ideology and encourage gender transitioning—with no parental notification or opportunity to opt out. Plaintiffs are parents from a variety of faiths—including Islam, Catholicism, and Orthodox Christianity—whose requests to be notified when the books would be read to their children and to be given an opportunity to opt out were denied by the Board.

The parents unsuccessfully brought an interlocutory appeal to the U.S. Court of Appeals for the Fourth Circuit from the district court’s denial of a preliminary injunction. The appellate panel held the parents were unlikely to prevail on their Free Exercise Clause and hybrid due process claims because they had suffered no cognizable burden and the Board’s policy satisfied rational basis review. The appellate panel thought it was critical that none of the parents had provided any information about how any teacher had actually used the pro-LGBT books in their child’s classroom. That court said that “simply hearing about other views does not necessarily exert pressure to believe or act differently than one’s religious faith requires.” 102 F.4th 191, 210 (4th Cir. 2024) (citation omitted). The parents then appealed to the U.S. Supreme Court.

3. Holding

The Supreme Court agreed with the parents, ruling 6-3, that these parents are entitled to an injunction as they are likely to prevail on their claim of Free Exercise violation. “[T]he Board’s introduction of the ‘LGBTQ+-inclusive’ storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that [*Wisconsin*] v. *Yoder* [406 U. S. 205 (1972)] found unacceptable.”²

4. Majority Opinion (Written by Alito)

Applying and reaffirming the broad applicability of its decision in *Yoder*,³ these books go beyond mere “exposure” and unacceptably burden the parent’s rights; the books carry with them “a very real threat of undermining” the religious beliefs that the parents wish to instill in their children. Relying on *Yoder* and distinguishing *Employment Div. v. Smith*, 494 U.S. 872 (1990), the majority held: “Thus, when a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.”⁴ The Board cannot prove that its system of “no opt-outs” is necessary to maintain the learning environment or workability because it allows other opt-outs from other curricula.

5. Concurrence (Justice Thomas)

“The Board’s ‘LGBTQ+-inclusive’ curriculum and no-opt-out policy pursue the kind of ideological conformity that *Pierce* [*v. Society of Sisters*, 268 U. S. 510 (1925) (1925)]

² Slip op., at 21-22.

³ “We have never confined *Yoder* to its facts.” *Id.* at 29.

⁴ *Id.* at 36.

and *Yoder* prohibit.”⁵ “[T]he Board’s no-opt-out policy imposes conformity with a view that undermines parents’ religious beliefs, and thus interferes with the parents’ right to “direct the religious upbringing of their children.”⁶ “The Board may not insulate itself from First Amendment liability by ‘weav[ing]’ religiously offensive material throughout its curriculum and thereby significantly increase the difficulty and complexity of remedying parents’ constitutional injuries.”⁷

6. Dissent (Justice Sotomayor, joined by Justices Kagan and Jackson)

“Today’s ruling threatens the very essence of public education. The Court, in effect, constitutionalizes a parental veto power over curricular choices long left to the democratic process and local administrators. That decision guts our free exercise precedent and strikes at the core premise of public schools: that children may come together to learn not the teachings of a particular faith, but a range of concepts and views that reflect our entire society. Exposure to new ideas has always been a vital part of that project, until now.”⁸

7. Legal Significance

In reaffirming the universal applicability of the high-water mark of free exercise cases—*Wisconsin v. Yoder*—the Court has raised the legal bar for government to satisfy when it burdens religious freedom. The majority obliterates the theory that *Yoder* was limited to the unique situation of insular Amish communities, saying that “this Court has never limited *Yoder* to its facts.”

In addition, the Court explicitly holds that the government must have compelling reasons to justify any state action that burdens believers like Wisconsin did in *Yoder* and Montgomery County did in this case. This blows away any fog obscuring when the “strict scrutiny test” is triggered in a case involving parents’ free exercise rights viz. public primary school curriculum.

Suffice it to say *Mahmoud* tells school districts three things:

- They had best listen to parental concerns before imposing curriculum.
- They ought to consider the impressionability of primary school children.
- If they worry about too many students being opted out, the school should re-think the suitability of the curriculum rather than deny notice and opt-out because school officials have chosen a curriculum so controversial that opt-outs become unworkable.

⁵ Thomas concurrence, at 8.

⁶ *Id.* at 10-11.

⁷ *Id.* at 12-13 (citation omitted).

⁸ Sotomayer dissent, at 38.

D. *St. Isidore's of Seville Catholic Virtual School v. Drummond*

1. Issue

Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

2. Background

"Petitioner is a private religious institution that [contracted with the OK state charter school board,] seek[ing] to partake in the benefits of Oklahoma's charter school program. Attorney General of Oklahoma (Respondent) sought a writ of mandamus in the Oklahoma Supreme Court to extinguish St. Isidore's contract and deprive it of the state funding it would receive if only it would abandon its religious exercise. In a split decision, the court issued the writ. The court . . . [held that] [the Catholic school] had become an arm of the government by virtue of that contract. It thus held that the Establishment Clause and Oklahoma laws aimed at creating 'a complete separation of church and state' compelled the court to deny Petitioner-on religious grounds-the benefits created by Oklahoma's Charter Schools Act."⁹

3. Holding

With Justice Barrett recusing herself (presumably because of her past association with the Notre Dame Law clinic representing the school), the Court was evenly split 4-4, meaning that the decision of the lower court (Oklahoma Supreme Court) stands.

4. Legal Significance

Very little. No opinion in this *per curiam* decision. No precedential value when court is evenly split.

E. *Apache Stronghold v. U.S.*, cert. denied

1. Issue

Is there a substantial burden on a group's religious exercise, thereby triggering the Religious Freedom Restoration Act (RFRA), where it is undisputed that the government is planning to permanently destroy the believers' historical place of worship, preventing them from ever again engaging in religious exercise there?

2. Background

Apache Indians have lived, worshipped on, and cared for Oak Flat and surrounding land since before history began to be recorded. Oak Flat is of paramount significance for their prayer and sacred ceremonies; many of their most important religious practices must take place there. The federal government has expressly protected Oak Flat from mining since the Eisenhower Administration. Although protected, mining companies have continued to lobby

⁹ Excerpted from Petition for Writ of Certiorari.

Congress for control of the land. Finally, in 2014, Congress included a last-minute rider transferring Oak Flat to Resolution Copper in a must-pass defense bill.

Apache Stronghold, which is a coalition of Apaches, other Native peoples, and non-Native allies dedicated to preserving Oak Flat, sued the U.S. government in federal court, arguing that the destruction of this sacred site violates both the Religious Freedom Restoration Act (RFRA) and an 1852 treaty promising that the United States would protect their land. The government admits the mine will destroy Oak Flat forever, thereby making the Apaches' religious practices impossible.

After the trial court declined to halt the land transfer, Apache Stronghold filed an emergency appeal to the Court of Appeals for the Ninth Circuit. Six hours before the government's response was due, the government announced it would withdraw the environmental impact statement that triggered the land transfer, which would delay the transfer for several months.

In June 2022, the Ninth Circuit refused to protect Oak Flat, ruling that the transfer did not substantially burden the Apaches' religious exercise. In November 2022, the Ninth Circuit agreed to rehear the case en banc. Unfortunately, the Ninth Circuit again refused to stop the federal government from transferring the land. While six judges observed that destruction of Oak Flat falls within the ordinary meaning of "substantial burden" under RFRA, thereby triggering the need for the government to justify itself, a separate and controlling en banc opinion of six judges created a carveout to the phrase's ordinary meaning (and RFRA's protection) for cases involving "the Government's management of its own land and internal affairs." Five judges dissented from the ruling, writing that the majority "tragically err[ed]" in allowing the government to "obliterate Oak Flat" and prevent the "Western Apaches from ever again" engaging in their religious exercise.

Apache Stronghold filed a cert. petition, but the Court declined to hear the case.

3. Legal Significance

The Ninth Circuit's high bar for a "substantial burden" under RFRA ["unless the government imposes a penalty or denies a benefit"] arguably eviscerates much of that law's muscle. The appeals court relied on *Northwest Cemetery v. Lyng*, 485 U.S. 439 (1988), a pre-*Smith*, pre-RFRA decision, that is the low-water mark for free exercise, where the Court said that when the federal government desecrates a Native American holy site it is not a substantial burden because the government can do what it wants with its own land. This is not Congress' intended definition of "substantial burden" under RFRA.

F. *Lackey v. Stinnie*

1. Issue

When does a plaintiff "prevail" under the Civil Rights Attorney's Fee Awards Act of 1976 (which is the statute awarding attorneys' fees to a plaintiff for state deprivation of federal civil rights)? Specifically, the issue focused on whether plaintiffs are prevailing parties

when they obtain a preliminary injunction and defendants abandon further litigation, thereby accepting the preliminary injunction as dispositive.

2. Background

Virginia drivers whose licenses were suspended because of their inability to pay court fines sued the VA Department of Motor Vehicles (DMV) under 42 U.S.C. § 1988(b), alleging that the suspension was unconstitutional. A federal court agreed and enjoined the DMV from enforcing the suspension law. Before the case reached final judgment, the state legislature repealed the challenged law, rendering the case moot.

4. Holding

In a 7-2 decision, the Court reversed the decision of the Court of Appeals for the Fourth Circuit and held that plaintiffs' obtaining of preliminary injunction was insufficient to entitle them to "prevailing party" status.

5. Majority Opinion (Chief Justice Roberts)

The majority held that a party "prevails" under the statute only "when a court conclusively resolves a claim by granting enduring judicial relief on the merits that materially alters the legal relationship between the parties."

6. Dissent (Justices Jackson and Sotomayor)

The dissent countered that the majority categorically precludes fee awards for those who successfully obtain preliminary injunctive relief, "even those [orders] that effectively resolve the case," which is contrary to the statute's objective and lacks textual support.

7. Legal Significance

This clarifies that the government may violate a federal civil right, force its victims to sue the government and meet the significant burden necessary to obtain a preliminary injunction—including that they will prevail on the merits at trial—and still avoid having to reimburse the victims' legal expenses just because the government folds up its tent before the end of the case.

II. Religious Freedom Cases the Court Will Hear in the 2025-2026 Term

A. *Chiles v. Salazar*¹⁰

1. Issue

Whether a law validly regulates conduct or violates the Free Speech Clause when it threatens the professional license of counselors if they explore with a patient certain options reflecting a viewpoint disfavored by the state.

¹⁰ No. 24-539, on appeal from *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024).

2. Background

Kaley Chiles is a licensed counselor and a practicing Christian who believes that people flourish when they live consistently with God's design, including their biological sex. But Colorado bans these consensual conversations if she explores with a minor patient options other than sex change procedures. Colorado's content- and viewpoint-based counseling restriction prohibits counseling conversations with minors that might encourage them to change their "sexual orientation or gender identity, including efforts to change behaviors or gender expressions," while allowing conversations that provide "[a]cceptance, support, and understanding for . . . identity exploration and development, including . . . [a]ssistance to a person undergoing gender transition." Colo. Rev. Stat. § 12-245-202(3.5). The Tenth Circuit upheld this ban as a regulation of Chiles's conduct, not speech.

3. Legal Significance

CLS' brief in support of the Christian counselor argues that Colorado's law, by prohibiting Chiles from expressing a viewpoint differing from support for sex change, forces a professional to choose between their livelihood and their conscience and best professional judgment. CLS also drew the Court's attention to ABA Model Rule 8.4g, which similarly violates free speech by regulating what attorneys manifest in their words or associations about protected classifications like same-sex marriage.

B. *First Choice Women's Resource Centers, Inc. v. Platkin*¹¹

1. 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?

2. Background

After *Roe v. Wade* was overturned, the New Jersey AG's office accused crisis pregnancy centers of deceptive practices and claimed it was exercising its broad investigative authority in issuing subpoenas to uncover fraud. The subpoenas are not self-executing; they must be enforced by state court. The AG's office pursued getting the information from the centers they targeted, but did not immediately ask state courts to enforce them. First Choice is one of the crisis pregnancy centers the New Jersey AG targeted. First Choice filed in federal court alleging that the subpoena is overbroad and asserting constitutional challenges. The District Court found the dispute not ripe, and the Third Circuit dismissed the appeal as moot. The District Court held that plaintiffs must wait until the AG files an enforcement action in state court before it would be ripe. Then the state initiated enforcement proceedings in New Jersey Superior Court, and First Choice moved to quash the subpoena. After a hearing, the motion was denied, and First Choice was ordered to respond to the subpoena within 30 days, though the judge did not threaten contempt. The judge concluded First Choice's

¹¹ No. 24-781, on appeal from *First Choice Women's Resource Centers, Inc. v. Platkin*, 2024 WL 3493288 (3rd Cir. 2024).

constitutional arguments (involving associational rights and free speech rights) to be not ripe. So First Choice went back to federal court and renewed its motion for a TRO.

Meanwhile, the state court held the state's motion to enforce her previous order "in abeyance" while waiting for the New Jersey appellate court to determine if its refusal to quash the subpoena would be upheld. The state again moved to dismiss in federal court on grounds of ripeness, abstention, and federalism concerns. The federal district court again found it not ripe: "Plaintiff's constitutional injury remains strictly hypothetical and not actual or imminent" until there is an actual finding of a violation of a court order.

3. Legal Significance

The First Amendment rights of a religious organization may be effectively denied if it cannot seek constitutional relief in federal court until an AG not only intimidates it with an investigation demand, but also with a subpoena and then seeks to enforce its subpoena in state court, thereby triggering an abstention argument that would dismiss the organization's federal action. So, it is a Catch-22 for the religious ministry: either file in federal court when the AG serves an investigatory demand and be dismissed as not yet ripe or wait until there is clear injury when the AG asks a state court to hold the ministry in contempt for not producing the subpoenaed documents and data, at the risk of having their federal action dismissed under the *Pullman* abstention doctrine.

G. *Landor v. Louisiana Dep't. of Corrections*¹²

1. Issue

Whether the Religious Land Use And Institutionalized Persons Act of 2000 (RLUIPA) authorizes damages suits against state officers in their individual capacities.

2. Background

Congress has enacted two "sister" statutes to protect religious exercise: the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.* In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), the Supreme Court held that an individual may sue a government official in his individual capacity for damages for violations of RFRA. RLUIPA's relevant language is identical.

State prison guards handcuffed Damon Landor, a Rastafarian prisoner, and held him down while shaving his lifelong growth of hair, despite a court order protecting him and the fact that he was weeks from release. The Court of Appeals for the Fifth Circuit condemned the guards' actions but followed circuit precedent saying that damages are not available. The *en banc* court denied review, but 15 of the 17 active judges (in concurrences and dissents) noted that *Tanzin* had or might have undercut the circuit precedent and that the Supreme Court should address the question.

¹² No. 23-1197, on appeal from *Landor v. Louisiana Dep't. of Corrections*, 82 F.4th 337 (5th Cir. 2023).

3. Legal Significance

This case will decide whether state actors can violate with impunity RLUIPA religious freedom rights. RLUIPA provides relief against those state agent violators individually, just as the Court said its sister statute (RFRA) does.

III. Religious Freedom Cases Percolating in U.S. Courts of Appeals

A. *McMahon v. World Vision*¹³

1. Issue

Does the First Amendment's Free Exercise Clause bar application to a religious nonprofit employer of federal and state laws against employment discrimination based on sex and sexual orientation (Title VII and Washington's state counterpart) where application would substantially burden the employer's undisputedly sincere religious belief and conduct standard on sexual activity outside a heterosexual marriage?

2. Background

A Christian nonprofit rescinded a job offer when it learned that the offeree had falsely stated her agreement to abide by the ministry's code of staff conduct; the applicant later revealed she was in a same-sex marriage. The district court rejected the ministry's arguments under the religious exemption in Title VII of the 1964 Civil Rights Act, as well as under the First Amendment's protection for speech, association, church autonomy (including ministerial exception), and free exercise of religion.

3. Legal Significance

Based on the oral argument in the Court of Appeals for the Ninth Circuit (by Becket's Daniel Blomberg), this may resolve in World Vision's favor based on the ministerial exception.

B. *Young Americans for Freedom v. Univ. at Buffalo Student Ass'n*¹⁴

1. Issue

Does the Supreme Court's decision in *CLS v. Martinez*, 561 U.S. 661 (2010), justify a public university student association's denial of recognition and otherwise-available funding to a student political group, despite free speech and free association claims?

2. Background

By virtue of being a recognized student group, *Young Americans for Freedom* (YAF) for years not only hosted meetings and speakers on the public university campus, but also shared in student body funding. After YAF hosted a so-called "controversial" speaker, the University at Buffalo Student Association (BSA) tried to force YAF to disassociate from its national organization. When YAF refused, BSA derecognized YAF, so YAF filed suit for an

¹³ No. 24-3259 (9th Cir.).

¹⁴ No. 25-140 (2nd Cir.).

injunction. BSA then rescinded its first policy and announced a new one with the same effect: student organizations cannot have national ties, and they must not have a corporate existence separate from the BSA (“Legal Status Ban”). YAF filed a new preliminary injunction motion, arguing the Legal Status Ban violated its expressive association rights and compelled speech, among other claims.

In a 77-page decision, the federal district court ruled that the U.S. Supreme Court’s unfortunate and now marginalized precedent in *Martinez* controlled, including that case’s merger of the free-speech and free-association analyses. As to free speech, it ruled that the Legal Status Ban is viewpoint neutral because it applies to everyone and makes no facial viewpoint distinctions. The court also rejected YAF’s free association claim against it being forced to merge with all other student groups; the court noted that YAF could still be recognized, just without its student fee funding.

3. Legal Significance

In its brief by Kim Colby, CLS argued that merging free speech and expressive association (as *Martinez* did) is wrong because it eviscerates association in universities; that *Martinez* is an outlier in association cases; and that *Martinez* only narrowly applies to a *stipulated* “all-comers policy,” which is not the policy in this case and which policy probably exists nowhere on any US campus.

C. Cedar Park Assembly of God Church v. Kreidler¹⁵

1. Issue

Does the Free Exercise Clause provide for a church an exemption from a state law requiring the church’s health insurance provider to cover abortion services for church employees, contrary to the church’s religious beliefs and conduct standards?

2. Background

A 2018 Washington state law requires all health plans that provide coverage for maternity care to provide the covered person “with substantially equivalent coverage to permit the abortion of a pregnancy.” *Self-funded plans are exempt*; but Cedar Park cannot afford to self-insure. For employers purchasing health insurance, the law provides that “[n]o individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reasons of conscience or religion.” While individuals and organizations do not have to purchase that coverage, enrollees must still be able to access it. Approximately 185 of Cedar Park’s employees are eligible for its health insurance coverage. Employees are required to sign a statement agreeing to follow Cedar Park’s standards of conduct, which includes its teachings on the sanctity of life both at work and outside of work. Even if Cedar Park would not be paying for those services, its employees would still have access to them under the church’s plan—something Cedar Park objects to as “facilitating” access to abortion.

¹⁵ Nos. 23-35560, 23-35585 (9th Cir.).

Before the law took effect, the church sued for injunctive relief based on the Religion Clauses, including free exercise and church autonomy, as well as equal protection. After a trip up to and back from the Court of Appeals for the Ninth Circuit, which ruled that the church had standing to assert its free exercise claims, the trial court granted Washington officials summary judgment again, agreeing that Cedar Park's free exercise claims fail as a matter of law because the statutes are neutral and generally applicable and are rationally related to multiple legitimate government interests, including protecting women's health and economic stability, and that the church's religious autonomy claim fails because purchasing a health insurance plan is not an ecclesiastical decision.

3. Legal Significance

This should be a tempting case for a friendly Supreme Court to reverse *Employment Div. v. Smith*. The plaintiff is a church and not a religious for-profit, cake baker, or a foster care agency. It has plenty of evidence of its pro-life beliefs. The church doesn't want its health insurance policy to cover abortions, regardless of whether the church indirectly pays for them. The state is forcing this church to violate those beliefs. Surely, this plainly violates the Free Exercise Clause, given the clause's origins, pre-*Smith* interpretative precedent, and plain meaning. There are exemptions in the state law, so the state's interest would likely fail to meet strict scrutiny (it cannot be that compelling, given that the law deprives coverage for employees of every self-funded employer).

D. *Ferguson v. Union Gospel Mission of Yakima*¹⁶

1. Issue

Does the Washington Supreme Court's rewriting of the religious exemption in that state's employment discrimination statute in *Woods v. Seattle's Union Gospel Mission*, 481 P. 3d 1060 (2021), violate the Free Exercise Clause?

2. Background

Union Gospel Mission of Yakima (YUGM) is a private, nonprofit religious organization that has served the Yakima community in Washington for 85 years through its homeless shelter, addiction-recovery programs, outreach efforts, meal services, and medical and dental clinics. YUGM serves all people but only hires employees who are likeminded believers to ensure that YUGM advances its religious purpose; YUGM only hires employees that adhere to its Christian faith, including abstaining from any sexual conduct outside of biblical marriage between one man and one woman. The Washington Law Against Discrimination (WLAD), however, requires religious organizations like YUGM to violate their religious convictions by forcing them to hire people who do not agree with and live out the religious beliefs of the organization. YUGM filed suit alleging that WLAD, as interpreted by the Washington Supreme Court in *Woods*, violates the Free Exercise Clause. The district court dismissed on standing (no injury yet), but the Court of Appeals for the Ninth Circuit reversed. On remand, YUGM obtained a preliminary injunction enjoining the state from enforcing

¹⁶ No. 24-7246 (9th Cir.).

(including through investigations) WLAD against YUGM for hiring only fellow Christians for its non-ministerial positions. The state attorney general appealed that decision to the Ninth Circuit.

3. Legal Significance

The Washington Supreme Court in *Woods* interpreted its state antidiscrimination law's religious exemption narrowly to only allow hiring co-religionists for positions it thinks are ministerial in function. This case gives a federal court an opportunity to affirm that the hiring rights of religious ministries like YUGM are broader than what a court would denominate as being religiously "ministerial."

E. *Schmitt v. Rebertus*¹⁷

1. Issue

Should the lesser free exercise protection afforded to incarcerated persons under the U.S. Supreme Court decision in *Turner v. Safley*, 482 U.S. 78 (1987), apply to the free exercise claims of a non-inmate pastor seeking to teach Bible class to groups of inmates?

2. Background

Anthony Schmitt taught a prison ministry class, Quest, at the Minnesota Correctional Facility-St. Cloud from 2012 to 2023 as an exercise of his faith. Quest teaches men how to live lives of authentic manhood as modeled by Jesus Christ and directed by the Word of God. Schmitt was forced to stop, however, because the acting commissioner of the Department of Corrections stated that "[t]he program directly conflicts with the diversity, equity, and inclusivity values of the department by defining manhood, or the study of masculinity, through a biblical lens of what a 'real man looks like.'"

Thanks in part to the work of CLS in the late 90s resulting in passage of the Religious Land Use And Institutionalized Persons Act of 2000 (RLUIPA), incarcerated persons have a right to strict scrutiny of burdens placed on their sincere religious exercise by prison authorities. But RLUIPA does not apply to non-prisoners; they must rely on the Free Exercise Clause.

Schmitt filed suit, asking for an injunction, the district court denied the injunction, mistakenly applying to this non-incarcerated pastor the anemic Free Exercise standard applicable to prisoners from *Turner*. Schmitt then brought an interlocutory appeal to the Court of Appeals for the Eighth Circuit.

3. Legal Significance

Free exercise rights should be afforded evenhandedly, regardless of who invokes them and where they are in the United States. The district court's reasoning creates the perverse result that inmates (who should have been made party plaintiffs in the first place, and hopefully will on remand, so they can invoke RLUIPA) have much greater religious freedom protection than a

¹⁷ No. 24-2707 (8th Cir.).

non-inmate seeking to minister to prisoners! *Fulton*, not *Turner*, should apply to non-inmates' free exercise claims. If so, the vast (and appropriate) discretion wielded by a warden must be subject to strict scrutiny, with appropriate deference given to their asserted government interests in safety and "rehabilitation."

F. *Smith v. City of Atlantic Beach*¹⁸

1. Issue

Did trial court misapply *Fulton* and *Tandon v. Newsom*, 593 U.S. 61 (2021) (*per curiam*), by applying rational basis review to Mr. Smith's free exercise claims even though the fire department has a categorical exemption to the "no beards" policy and the fire chief has an individualized discretion to grant exemptions?

Under *Groff v. DeJoy*, 600 U.S. 447 (2023), does "undue hardship" include not only costs and expenditures but also nonmonetary impacts?

2. Background

Mr. Smith is an air mask technician with the city fire department. Smith's religious beliefs compel him to wear a beard. A beard would prevent him from getting an adequate seal on his air mask were he to be called to fight a fire. The fire department rejected his request for a religious accommodation under Title VII and the Free Exercise Clause to grow a beard. The district court granted the city summary dismissal, overlooking recent U.S. Supreme Court free exercise decisions requiring religious exemptions where one or more secular exemption is possible and applying intermediate rather than strict scrutiny.

3. Holding and Legal Significance

The Third Circuit reversed in favor of Smith, reinforcing the "generally applicability" tests in *Fulton*: "[T]wo exceptions—one practical exception and one discretionary regime—render the city's policy not generally applicable. First, the city has long permitted administrative staff, all of whom are firefighters subject to the SCBA rule, to forgo fit testing. . . . Second, the city's grooming regime has built-in discretion. Captains may 'deviate' from the SCBA policy and permit any sort of conduct as long as they 'bear[] full responsibility for the results of any deviation.'"

The Third Circuit panel also (1) reiterated that strict scrutiny applies to all free exercise burdens and (2) rigorously applied the new *Groff* "undue hardship" test under Title VII religious accommodation. ("It is telling that no Air Mask Technician has been called to engage in fire suppression for several decades.")

¹⁸ 138 F.4th 759 (3rd Cir. 2025).