

BenchMark NCJW's Judicial Nominations Campaign

Religious Freedom and the Supreme Court

As Jews, we know that religious liberty – guaranteed by the First Amendment to the US Constitution – is meant to be a shield to protect minority religions, but all too often is used as a discriminatory sword. The cases below detail how the US Supreme Court has shaped religious freedom over the last several decades, but it is important to remember that all courts matter. Like Supreme Court justices, judges sitting on federal district and circuit courts serve for life and make critical decisions about the rights of all Americans. Justice for all depends on a fair, diverse, and independent judiciary committed to core constitutional rights, including religious liberty.

- *Engel v. Vitale* (1961): The New York State Board of Regents created a short, nondenominational prayer that could be recited each morning in NY public school classrooms. Jewish families sued, arguing that the prayer violated their religious beliefs. In a 6-1 decision, the US Supreme Court ruled that **government-written prayers in public schools violate the Establishment Clause**.
- *Abington School District v. Schempp* (1963): Pennsylvania public school students were required to read from the Bible each morning and say the Lord's Prayer, though students could be exempted with parental permission. The Schempp family sued, contending the statute violated their First Amendment rights. In an 8-1 decision, the US Supreme Court agreed, holding that the **readings and prayer constitute religious ceremonies**.
- *Lemon v. Kurtzman* (1971): Pennsylvania law allowed the superintendent of public schools to use public funds to reimburse private schools (primarily Catholic schools) for teacher salaries, textbooks, and instructional materials. The US Supreme Court, in a unanimous decision, ruled that **public funding for private, parochial schools was a violation of the Establishment Clause**. This case set up a three-part legal test for legislation, still in use, to determine whether laws violate the First Amendment.
- *Mueller v. Allen* (1983): Minnesota law allowed **taxpayers to deduct expenses for "tuition, textbooks, and transportation" to parents of children at parochial elementary or secondary schools**. The district and circuit courts held that the state's tax law was constitutional because it did not provide funding for religious schools and was neutral, neither advancing nor inhibiting religion. The US Supreme Court, in a 5-4 decision, upheld the lower courts utilizing the legal test set up in *Lemon v. Kurtzman*.

- *Lynch v. Donnelly* (1984): The town of Pawtucket, Rhode Island had a Christmas display including a Santa house, a tree, and crèche. The district and circuit courts held that the nativity scene was a violation of the Establishment Clause. In a 5-4 decision, the US Supreme Court reversed the ruling, holding that the display, viewed in the context of the holiday season, was not an attempt to advocate a particular religion and had “legitimate secular purposes.” In later cases, the US Supreme Court has varied on **the constitutionality of government displays of religious symbols**.
- *Employment Division v. Smith* (1990): Members of a Native American Church, employed at a drug rehab clinic, were fired for using peyote during a religious observance and were denied unemployment compensation. The US Supreme Court, in a 6-3 decision, ruled that the state’s denial of unemployment compensation was justified and did not violate the Free Exercise Clause because it applied to all religions. The Court **created a new standard making it harder for individuals to challenge generally applicable laws that might violate the religious free exercise**. In response, Congress passed the Religious Freedom Restoration Act (RFRA), making it more difficult to pass laws that burden religious freedom, regardless of general applicability.
- *City of Boerne v. Flores* (1997): An archbishop in Texas who was denied a permit to expand his church based on bans against new construction in a preservation area sued under RFRA claiming a violation of the Free Exercise Clause. While the federal district court ruled that RFRA was unconstitutional, the circuit court reversed the decision. In a 6-2 decision the US Supreme Court **struck down RFRA as it applies to the states**. It held that the Court, not Congress, had the right to interpret the Constitution as it applies to states. In response, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect religious institutions against property restrictions as well as prisoners’ right to worship.
- *Zelman v. Simmons-Harris* (2002): Due to poor public school performance in many low-income Cleveland neighborhoods, the legislature created a program providing **tuition vouchers** to parents in school district. Vouchers could be used at participating public or private schools in the city and neighboring suburbs. In the 1999–2000 school year, 82% of the participating schools had a religious affiliation and 96% of the students receiving vouchers attended religiously affiliated schools. In a 5-4 decision, the US Supreme Court ruled that the Cleveland program did not violate the Establishment Clause because it was neutral and enacted for the secular purpose of providing educational assistance to children.
- *Town of Greece v. Galloway* (2014): The town council of Greece, New York **opened every council session with a prayer** led by a volunteer chaplain. Two residents claimed that the prayer violated the Establishment Clause, as the town never sought to involve, accommodate, or in any way reach out to adherents of non-Christian religions. In a 5-4 decision, the Supreme Court held that that the town’s practice conformed to past Supreme Court decisions and the Congress practice to start with daily, non-coercive prayers.

- *Burwell v. Hobby Lobby* (2014): Owners of a chain of crafts stores, Hobby Lobby, cited religious objections to allowing employees to take advantage of the Affordable Care Act birth control benefit. In a 5-4 decision, the US Supreme Court interpreted the Religious Freedom Restoration Act (RFRA) to **allow “closely held,” for-profit corporations to have religious beliefs** that would exempt them from the benefit. The majority of the Court went to great lengths to isolate contraception from other health care needs — a grievous blow to women’s rights and religious liberty, as well as to their health and well-being.
- *Equal Employment Opportunity Commission v. Abercrombie & Fitch* (2015): A Muslim woman wearing a head scarf at a job interview was rejected by Abercrombie & Fitch because of the company’s dress policy. The Equal Employment Opportunity Commission (EEOC) sued, claiming that the store’s refusal to accommodate the woman’s beliefs violated the 1964 Civil Rights Act. The US Supreme Court ruled 8-1 against the store, as the applicant showed that her **need for an accommodation was a motivating factor in the employer’s decision**, regardless of whether the employer actually knew of the need.
- *Holt v. Hobbs* (2015): Gregory Holt, a Muslim man incarcerated in Arkansas, was forbidden from growing a half inch beard in accordance with his religious beliefs. In a unanimous opinion, the US Supreme Court held that the Arkansas Department of Correction’s policy violated RLUIPA.
- *Advocate Health Care Network v. Stapleton* (2017): The Employee Retirement Income Security Act of 1974 (ERISA) exempts churches from specific pension plan rules, known as a “church plan” exemption. Advocate Health Care Network, a church-affiliated health care system, claimed this exemption. Several employees sued, arguing that the health care system violated ERISA because the retirement plans were maintained by the hospital, not a church. The US Supreme Court held that **church-affiliated hospitals do qualify for the exemption**, regardless of who established the plans.
- *The American Legion v. American Humanist Association* (2019): In the early 1920s, a 40-foot tall cross was erected in Maryland as part of a memorial park to veterans, and the Maryland National Capital Park and Planning Commission eventually took over maintenance and repair park. The American Humanist asserted that the religious display and use of government funds to maintain it was a violation of the First Amendment’s Establishment Clause. Despite the excessive entanglement of government and religion, the US Supreme Court held that **the cross, as a long-standing monument to fallen soldiers, does not violate the Establishment Clause**.