AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS

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Four church-state issues to watch at the US Supreme Court this term

https://www.au.org/the-latest/articles/supreme-court-new-term-church-state/

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The U.S. Supreme Court's new term began last month, and already the court is making headlines for everything from rebuffing the Trump administration's attempts to stop providing gender-affirming health care for imprisoned transgender people, to Justice Elena Kagan's recent remarks to law students that the court's ultra-conservative bloc "has created a democracy that does not work as well as it should."

How church-state separation will fare at the court this term also is top of mind at Americans United. In a recent story in The Washington Post, AU President and CEO Rachel Laser warned, "The biggest concern is the way the court has turned religious freedom on its head. [The court has] misused religious freedom as a way to allow people to impose their religion on others and undermine church-state separation, which is the true guard for religious freedom."

The newspaper's analysis has found that, during its past five terms, the Supreme Court has ruled in favor of expanding the rights of religious groups in nearly every case. At the same time, The Post analysis noted the current court is the first since the 1950s to contract, rather than expand, civil rights.

Laser has explained that when the Supreme Court under Chief Justice John Roberts rules in favor of "religion," it typically is ruling in favor of expanding religious privilege for conservative Christians, not in favor of protecting religious freedom for all, especially religious minorities.

Here are some of the cases that touch on church-state separation and religious freedom that AU is monitoring this term:

1**. Religion being used as a license to harm others**

The first church-state case on the court's docket will be argued today. Becket Fund for Religious Liberty (a legal group that's part of the Christian Nationalist web AU has dubbed the Shadow Network) will represent several Catholic schools in Colorado that want to participate in a state-funded universal preschool program, but don't want to follow the program's nondiscrimination requirements. The schools have anti-LGBTQ+ admissions and hiring policies.

AU, joined by over a dozen civil rights and religious organizations, in August filed a friend-of-the-court brief in the case, explaining that Colorado is not required to exempt faith-based schools from nondiscrimination requirements. The state allows religious schools to participate in the program on equal footing with secular schools. The brief explained that the requirements ensure all eligible children are served and not discriminated against because of their or their families' LGBTQ+ identity or other protected characteristics.

In December, the court will hear arguments in a case brought by the Shadow Network organization America First Legal Foundation to challenge a Washington state law that allows runaway teenagers to seek gender-affirming care through shelters, without a parental-notification requirement. America First represents several parents, some of whom cite their anti-transgender religious views and claim the law interferes with their ability to control their children's upbringing.

The court has not yet decided whether to hear several additional cases that seek to misuse religious freedom as a license to harm others, primarily by circumventing non discrimination protections or public-health requirements. Many of these pending cases are spearheaded by the Shadow Network group Alliance Defending Freedom (ADF), including:

- A Maryland public school teacher who claims using children's preferred pronouns violates her religious beliefs and free-speech rights.
- A Korean spa for women in Washington state cites religious beliefs in its refusal to serve transgender women.

- An Oregon ministry that requires employees to sign a Christian statement of faith is challenging the revocation of public funding for failing to adhere to the state's nondiscrimination-in-hiring requirements.
- A family is challenging West Virginia's school-vaccination requirements that do not permit religious exemptions, including for students attending virtual public school.

2. Land use and religious freedom

The court has agreed to hear two cases this term involving a federal law known as the Religious Land Use and Institutionalized Persons Act (RLUIPA). On Dec. 9, ADF will represent an Orthodox Jewish man from University Heights, Ohio, who is suing over a city requirement that he get a permit to host prayer gatherings in his home.

The question before the court in his case is more procedural than religion-related. He applied for the permit but withdrew his application before the city issued a decision; he sued instead. The court is considering whether he had to wait for the city to issue a final decision on the permit before he can sue.

Oral arguments have not yet been scheduled in the second land-use case the court agreed to hear. The Shadow Network group First Liberty Institute represents a Catholic organization in Kentucky that bought neighboring land to build a shrine. The zoning permit for the shrine was blocked after neighbors sued. The Kentucky Supreme Court ruled the denial did not impose a substantial burden on religious exercise because the group could build a smaller shrine on a different plot and because the group was aware the land wasn't zoned correctly when it bought the land.

3. Ten Commandments in public schools

Americans United and our allies have petitioned the court to hear two cases in which we represent 28 multifaith and nonreligious Texas families who are challenging the Texas law requiring a Protestant version of the Ten Commandments to be displayed in every public school classroom. (**Watch and share these powerful videos** to learn more about how these religious displays are harming families with children in public schools.)

The legal team representing the families – AU, the ACLU, the ACLU of Texas, FFRF, and the law firm Simpson Thacher & Bartlett LLP – in August

asked the U.S. Supreme Court to reverse the decision of the full 5th U.S. Circuit Court of Appeals, which let the Ten Commandments mandate take effect in the families' school districts. Ignoring decades of legal precedent, the appeals court ruled 9-8 that Ten Commandments posters in children's classrooms are not coercive and don't violate the U.S. Constitution's religious freedom protections.

The court is not expected to announce whether it will take up our Ten Commandments lawsuits before December at the earliest.

4. Taxpayer funding of religious education

Two pending cases involve the Virginia Tuition Assistance Grant Program, which assists residents who attend accredited Virginia colleges and universities. The cases, brought by First Liberty, ADF, and the National Legal Foundation, challenge the program's exclusion of degrees for religious training or theological education. Both cases involve students who attend Liberty University, the conservative Christian college founded by televangelist Jerry Falwell Sr.

A third pending case, also brought by First Liberty, challenges California public charter schools' refusal to fund religious instructional materials for students enrolled in homeschool programming.

American United for Separation of Church and State will be monitoring all these cases as the Supreme Court's term proceeds; stay tuned to au.org and our social media platforms for updates. Of the cases the Supreme Court agrees to hear this term, decisions are expected by June 2027.

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