Espinoza v. Montana Board of Review

- Free Exercise follow-along to Trinity Lutheran
- History & prevalence of Blaine Amendments
- Key issues:
  - Does Trinity Lutheran rule against religious exclusion extend to public funding for religious schools.
  - “Status” v. “Use”: Is funding for religious schools “religious use” or is exclusion based on “religious status?”
  - Religious animus: Can or should Blaine Amendments be invalidated based on history of religious animus?
  - Leveling down: Can discrimination be cured by eliminating program/benefit entirely?
- Predictions and potential next cases.
  - Justices Roberts and Alito on race; Justice Kavanaugh on leveling down
  - Historic preservation cases (Morristown County)
  - Standing as a non-factor


- Religion Clauses follow-along to Hosanna-Tabor
- The role of the Ministerial Exception
- Key issues:
  - Is function alone sufficient to trigger the ministerial exception?
  - What is the role of ordination and title?
  - Ninth Circuit test.
- Predictions and potential next cases
  - Argument April 1
  - Justice Breyer at Espinoza on the role of religious schools.
  - How far should the ministerial exception extend
  - Consider school group cases; potential impact on CLS v. Martinez

Little Sisters of the Poor v. Commonwealth of Pennsylvania

- RFRA follow-along to Zubik v. Burwell
- History of the contraception mandate litigation
- Key issues:
  - Standing
  - NPRM Issues
Tension between RFRA and the Affordable Care At and APA; which controls?

Nationwide injunctions!

Predictions and potential next cases

Argument in April

End of the Little Sisters’ 10-year saga?

**Ricks v. Idaho Board of Contractors; Fulton v. City of Pennsylvania**

- Challenges to *Employment Division v. Smith*
- *Smith* & its shortcomings
- Key issues:
  - Will the court protect *Lukumi*?
  - Or will the court return to *Sherbert*?
  - Impact on religious adoption
  - Will the Court go beyond *Masterpiece Cakeshop (Arlene’s; Sweetcakes)*

Predictions and potential next cases.

- What does a post-*Smith* world look like?
- Where is Justice Breyer? Justice Kagan?

**Patterson v. Walgreens**

- Challenge to *TWA v. Hardison*
- Key issues:
  - Impact for “minority” religious believers
- Predictions and potential next cases.

**Other Cases with Religious Liberty Impact**

- *Bostock v. Clayton County*, No. 17-1618 & *Altitude Express, Inc. v. Zarda*, No. 17-1623 (whether Title VII’s bar on sex discrimination applies to sexual orientation)
- *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, No. 18-107 (whether Title VII’s bar on sex discrimination applies to transgender discrimination
- *Tanzin v. Tanvir*, No. 19-71 (whether RFRA authorizes individual capacity damages claims against federal employees)
- *June Medical Services v. Gee*, No. 18-1323 & *Gee v. June Medical Services*, No. 18-1460 (abortionists’ challenge to state’s hospital admitting privileges requirement, and state’s challenge to abortionists’ third-party standing to assert rights of patients)
- *USAID v. AOSI*, No. 19-177 (First Amendment constitutionality of a federal rule that foreign grantee affiliates in anti-HIV program have express policy opposing sex trafficking and prostitution)
Fall 2019 Term

The United States Supreme Court & Becket Cases

Becket
Religious Liberty for All
The discriminatory **Blaine Amendments** renders them unconstitutional, and that religious organizations cannot be treated as second-class citizens when it comes to widely available public benefit programs.
Religious schools like *Our Lady of Guadalupe School* and *St. James School* should be fully empowered to select those who embody, teach, and fulfill their missions free from government interference. The Supreme Court will hear these consolidated cases on April 1.
The Little Sisters of the Poor have been embroiled in years of legal battles. Several states have sued to take away the nuns’ hard-won religious exemption. The Supreme Court will most likely consider the case in April.
ON THE ROAD TO THE SUPREME COURT (again)

CONTRACEPTIVE MANDATE
In 2011, HHS issued a federal mandate requiring employers to provide contraceptives in their insurance plans.

2011

LITTLE SISTERS SUE
In 2013, the Little Sisters want to court to protect their religious freedom. Losses at the district and appeals courts sent the Sisters to SCOTUS.

2013

EMERGENCY RELIEF
On New Year’s Eve 2013, Justice Sotomayor issued an emergency injunction to grant immediate relief for the Little Sisters.

2013

SCOTUS RELIEF
In January, the Supreme Court issued an injunction to protect the Sisters while the case continued.

2014

NEW HHS RULE
In October 2017, the federal government issued an exemption for religious non-profits, protecting the Sisters.

2017

STATES SUE
Several states, including California and Pennsylvania, immediately sued to take away the Sisters’ religious exemption.

2017

SISTERS APPEAL TO SCOTUS
In October 2019, after a loss in the Third Circuit, the Little Sisters asked SCOTUS to close their case once and for all.

2019

SCOTUS VICTORY
In 2016, the Supreme Court sided with the Little Sisters, unanimously overturning lower court rulings.

2016

BACK AT SCOTUS
On January 17, 2020, the Supreme Court agreed to review the Third Circuit’s decision.

2020
Was Catholic Social Services discriminated against when Philadelphia prevented it from serving children and families consistent with the agency’s sincere religious beliefs?
Fostering Love

The Story of Sharonell Fulton
Darrell Patterson was fired for failing to run a training program on his Sabbath—after raising this issue with his employer on numerous occasions and being assured of an accommodation.
WHY DID Walgreens FIRE A RELIGIOUS MINORITY?
George Ricks cannot supply his SSN consistent with his sincere religious beliefs to get his contractor’s license, even though he can submit alternative forms of identification. Does the Free Exercise Clause prohibit Idaho from denying an accommodation?