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Court delays arguments; religious liberty, abortion rulings await

by Tom Strode, posted Friday, March 20, 2020 (one month ago)

WASHINGTON (BP) -- The U.S. Supreme Court has paused part of its work in response to the coronavirus (COVID-19) with decisions in important cases regarding religious liberty, sexuality and abortion still to be announced.

The high court announced March 16 it has postponed oral arguments scheduled for March 23-25 and March 30-April 1 to abide by recommendations offered in response to the continuing spread of the coronavirus. The court said it would study the alternatives for rescheduling arguments based on developments with the virus.

The Supreme Court building has been closed since March 12 to protect the health and safety of employees and the public.

Oral arguments that will produce an important church-state ruling are among those to be delayed. The consolidated cases of *Our Lady of Guadalupe School v. Morrissey-Berru* and *St. James School v. Biel* find the high court considering again the freedom of churches and other religious organizations to make employment decisions without government interference.

In a unanimous decision eight years ago, the Supreme Court ruled a "ministerial exception" exists that enables churches and other religious groups to hire and fire based on their beliefs. The now-postponed cases before the high court also involve the termination of teachers by religious schools. The Catholic schools in the new cases chose not to renew contracts for two fifth-grade teachers based on poor performance, according to Becket, a leading religious freedom organization that is representing the schools.

In both suits by the teachers, federal judges ruled in favor of the schools based on the Supreme Court's 2012 decision, but the Ninth Circuit Court of Appeals in San Francisco reversed the opinions.

The ERLC joined other organizations in filing a friend-of-the-court brief in support of the schools, contending it has always been "well settled that when religious organizations make decisions about matters of faith, doctrine or internal governance, the Religion Clauses of the First Amendment bar the government from second-guessing those choices."

The First Amendment's religion clauses prohibit government establishment of religion and protect the free exercise of religion.

Travis Wussow, the ERLC's general counsel and vice president for public policy, told Baptist Press the Supreme Court "must step in to correct the perilous ruling from the Ninth Circuit. As we said when we filed our brief requesting [review of the Ninth Circuit opinion] last fall, it is wrong to allow the federal judiciary the power to decide which theological beliefs deserve First Amendment protections."

Another significant religious freedom case is still to be argued before the justices this term. The high court is scheduled to hear oral arguments April 29 in a case involving the abortion/contraception mandate in a 2011 rule instituted under President Obama. The regulation required employers to provide their workers with coverage for contraceptives, including those with mechanisms that can potentially induce abortions. Violators could face potentially devastating fines.

In 2018, the Trump administration issued final rules protecting employers with religious or moral objections to the mandate, but Pennsylvania and other states had challenged interim regulations issued the year before. In 2019, the Third Circuit Court of Appeals ruled against the Little Sisters of the Poor, a Roman Catholic order that serves the poverty-stricken elderly and sought an exemption from the 2011 rule. The decision came in spite of the Little Sisters' victory at the Supreme Court in 2016. The case is *Little Sisters of the Poor v. Pennsylvania*.

The ERLC, GuideStone Financial Resources and other Southern Baptist entities have opposed in friend-of-the-court briefs the abortion/contraception mandate and its failure to protect non-church-related, nonprofit organizations that object to the requirement.



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"It ought to exhaust all Americans that the Little Sisters of the Poor are yet again forced to defend their religious liberty in court," Wussow said in written comments. "We filed a friend-of-the-court brief on this case with a broad coalition of religious institutions in defense of the religious accommodation the Little Sisters already won at the Supreme Court. This ongoing attempt to deny such an accommodation undermines our Constitution's guarantee of the free exercise of religion."

Other cases that have already been argued before the high court this term include:

-- *Altitude Express Inc. v. Zarda*, *Bostock v. Clayton County* and *Harris Funeral Homes v. EEOC*, which will determine whether longstanding, non-discrimination protections based on "sex" in federal workplace law cover "sexual orientation" or "gender identity." The first two cases are about "sexual orientation," while the third regards "gender identity." The ERLC signed onto friend-of-the-court briefs that contended "sex" in Title VII of the 1964 Civil Rights Act does not include either classification.

The justices have an opportunity in the cases to clarify a contentious sphere of law that sometimes affects the conscience rights of business owners, especially Christians, in conflict with the claims of their employees.

-- *Espinoza v. Montana Department of Revenue*, which involves a state tax credit scholarship program that includes Christian and other religious schools. The ERLC joined in a friend-of-the-court brief arguing the Montana Supreme Court's invalidation of the program is discrimination that "violates the fundamental principles of the [First Amendment's religion clauses protecting free exercise and prohibiting government establishment]: Government neutrality and private choice in matters of religion."

-- *June Medical Services v. Russo*, which will decide whether the state of Louisiana can seek to protect the lives and health of women by requiring doctors to have admitting privileges at a hospital within 30 miles of the clinic where they perform abortions. The ERLC filed a friend-of-the-court brief in support of the state, saying the "undue burden" test used by the high court in the past is the incorrect standard for laws that regulate abortion doctors.

Opinions in the cases are expected from the high court before its term concludes this summer.

The justices apparently will hear oral arguments next term in a case involving the religious liberty of adoption and foster care agencies. The justices agreed in February to review a Third Circuit Court ruling that the city of Philadelphia did not violate religious freedom by halting referrals to Catholic Social Services because it does not place children in the homes of same-sex couples.

The justices were to hold their regularly scheduled conference Friday (March 20), though some justices may take part by telephone, the court's public information office said. The high court will issue its next list of orders March 23.

It is not the first time the Supreme Court has delayed oral arguments, according to its public information office. The court also postponed scheduled arguments in October 1918 as a result of a flu epidemic. It reduced its argument calendars in August 1793 and August 1798 because of yellow fever outbreaks.

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