

# Religious Liberty Update

*by Sorin A. Leahu*

With the Supreme Court's term set to end within the next couple weeks, many are eagerly anticipating a decision in *Obergefell v. Hodges*. Generally referred to as "the gay marriage case," *Hodges* will significantly influence religious liberty and is sure to rival *Roe v. Wade* in societal impact. It is no surprise then that other important cases within the last few months have been largely overshadowed by *Hodges*. Three notable examples include the following:

## *Reed v. Town of Gilbert*

In *Reed*, The Good News Community Church, a small church in Gilbert, AZ, rented space for its weekly meetings. The church used small, temporary signs to attract and invite people to its services. The city of Gilbert, however, imposed strict limits on the size, location, number, and duration of the church's signs. Incidentally, those same restrictions were not imposed on political, ideological, or homeowners' association signs. The Good News Community Church sued the city for discrimination on the basis of religious speech.

The Ninth Circuit Court of Appeals ruled in favor of Gilbert, siding with other federal courts which have held that a city's motive is an essential factor in analyzing content-based discrimination of sign codes. Because the city did not have a bad motive, the content-based discrimination was excused. The Appellate Court also held that political and ideological signs are of greater importance than religious signs, prompting a forceful dissent.

This case is important for several reasons. Should the Supreme Court side with Gilbert, other cities across the country would be granted unprecedented ability to advocate for speech they like while suppressing speech they do not like. Indeed, a city would only need to demonstrate a good motive, (or perhaps conceal a bad one), in order to get away with content-based discrimination. In contrast, a victory for the church would quash government censorship and open the doors for religious speech to flourish. Fortunately, the Supreme Court agreed to hear the case. Although a decision has

not yet been made, the outcome of the oral arguments was encouraging.

## *Holt v. Hobbs*

In another important, albeit overlooked case, the Supreme Court unanimously upheld the religious liberty rights of an Islamic prisoner who wanted to grow a half-inch beard in violation of prison regulations. The Supreme Court decided unanimously that the regulations violated the prisoner's religious liberty rights. As pointed out by Professor Eugene Volokh, *Holt* marked the third time that the Supreme Court read the religious exemption statutes, namely RFRA and RLUIPA, as providing broad protection for religious objectors. (The other two being *Gonzales v. O Centro* and most recently *Burwell v. Hobby Lobby*). Furthermore, most commentators agree that Justice Alito's analysis will impact religious liberty cases far outside the prison context.

## *Baker v. Hands on Originals*

Finally, it is worth noting a Kentucky state court decision upholding the right of a Christian-owned printing company to refuse to print T-shirts promoting a gay rights festival. The Kentucky Circuit Court reversed a decision by a human rights commission charging Hands On Originals with discrimination. That decision halted a string of losses by photographers, bakers, and florists in similar "discrimination" cases. This issue is far from settled and will only become more prevalent as nondiscrimination laws clash with religious liberty.

In sum, it is crucial that the body of Christ remain in fervent prayer for the judges, attorneys, law clerks, and all those in the legal arena who are impacting the legal landscape. While the eyes of many are focused on *Hodges*, let us not forget other important cases like *Reed*. Finally, our prayers are incomplete without offering thanksgiving for the victories that have been achieved. Cases like *Holt* and *Hands On Originals* and every victory for religious liberty that follow will only provide additional tools to advance the Kingdom of God. Let us rejoice and be grateful for these victories as we pray for more to follow. ■