

Our Plaintiffs are Pastor Tony Spell and Life Tabernacle Church of Baton Rouge, Louisiana. Pastor Spell is a Pentecostal minister who believes that the Bible commands him to assemble his church in person. He also routinely lays hands on the sick and prays for them, baptizes new converts, and provides food to the members of his community—none of which can be done online. His church has over 1500 members.



Pastor Tony Spell and Life Tabernacle Church

When the COVID-19 outbreak occurred, Louisiana’s Democratic Governor, John Bel Edwards, issued orders that essentially prohibited gatherings of 10 or more. Pastor Spell believed that he could not comply with that order, so he and his church chose to “obey God rather than men.” (Acts 5:29.) **For continuing to assemble in person, the police charged him with six misdemeanor counts of violating the Governor’s orders.** The police also arrested him after they accused him of trying to intimidate a protestor, which we believe to be a false charge. At his bail hearing, the judge told him that if he was released, *he could not assemble his congregation and preach to them as he had been doing*. When he could not agree, the judge placed him under house arrest, placing an ankle bracelet on him to ensure that he did not leave his house. But when Sunday came, Pastor Spell went and preached to his church, and “kept right on teaching and preaching Jesus,” just as he had been doing. (Acts 5:42.)

After these events, **we filed a complaint** in the United States District Court for the Middle District of Louisiana, *because the government had continually violated the rights of Pastor Spell and the church*. We asked for a temporary restraining order against the governor and the police, which was denied by Judge Brian Jackson, who was appointed by President Obama. We immediately appealed to the U.S. Court of Appeals for the Fifth Circuit. During that time, the Governor changed his order, allowing churches to meet at 50% capacity. The Fifth Circuit held that the appeal was moot because Governor Edwards’ order changed. Judge Ho, who was appointed by President Trump, concurred, but he noted that if Louisiana allowed Black Lives Matter to assemble without any restrictions, then it could not forbid Pastor Spell and his congregation from assembling without restrictions. We respectfully disagree with the Fifth Circuit’s conclusion that the appeal is moot, *because the law makes an exception if a matter is capable of repetition but evading review*. **That’s exactly what’s going on here**, because



Louisiana's COVID-19 orders are constantly changing yet suffer from the same flaw: not allowing churches to assemble fully. On that ground, *we are preparing to ask the United States Supreme Court to take the case.*

While many of our fellow religious liberty organizations have been doing good work in cases like these across the country, we respectfully submit that our case may be the most important out of all of them for two reasons. First, no government in any other state has taken such drastic action against a pastor as the government has taken against Pastor Spell in Louisiana. **He is facing multiple criminal charges for simply holding church services!** Second, our claims are bolder than any other case that we have seen. Many of our fellow organizations are pressing the theory that churches should be allowed to meet on the same terms as everyone else. The Supreme Court has already rejected two emergency appeals from cases employing that theory. In contrast, *we are claiming that the decision of whether to assemble in person or not should be left to the churches, not the government.* We believe that this is what the First Amendment requires, and we have precedent from some key First Amendment cases to support our claims. If we win, then we can not only vindicate Pastor Spell, but all other churches and pastors that are facing similar threats of prosecution.

It was an honor to get involved in this very important case, *but we can only continue to do so with your help!* **In order to continue supporting our work, will you please support our ministry through a tax-deductible donation of \$35, \$50, \$100, or even \$500 today?**

II. Amicus Briefs

A. New Amicus Briefs

We were able to write three new *amicus* briefs this quarter. The first was a merits-stage brief in *Fulton v. City of Philadelphia*, which could be the most important religious liberty case that the Supreme Court has heard in years. In this case, the City of Philadelphia passed an ordinance that required religious adoption agencies to place children in homes with same-sex partners. Sharonell Fulton and Catholic Social Services sued, claiming that the ordinance violated their religious beliefs. The Supreme Court eventually agreed to hear their case, and the Foundation filed an *amicus* brief in their support. One issue that the Court is



Sharonell Fulton, one of the petitioners, who has fostered more than 40 children through Catholic Social Services

considering is whether *Employment Division v. Smith*, which stripped the Free Exercise Clause of much of its power, should be overruled. ***This Foundation has been arguing for years that Smith should be overruled, and we argued it again in this brief.***

Second, the Foundation filed a brief supporting the State of Alabama before the United States Court of Appeals for the Eleventh Circuit in *Robinson v. Marshall*. When the COVID-19 outbreak hit, Alabama Governor Kay Ivey issued several orders that had the effect of restricting abortion clinics. The clinics in Alabama sued and received a preliminary injunction forbidding the State from enforcing the orders against them, and the State appealed. The Foundation filed an *amicus* brief supporting the State, arguing that it would be absurd to tell churches that they have to remain closed while carving out an exception for abortion clinics.

Finally, the Foundation submitted a brief to the Eleventh Circuit in *Gardner v. Mutz*. This case involved tearing down a monument in Florida. We took the opportunity to warn the Court of the dangerous trend to erase our history, as we're seeing across the country from *violent* groups like *Antifa*.

2. Results in Old Cases

As the Supreme Court ended its term in June and July, we witnessed three victories in cases in which we had filed *amicus* briefs. The first case was *Little Sisters of the Poor v. Pennsylvania*. This case was the latest in an ongoing battle between Obamacare and religious liberty. When the Trump administration came into power in 2017, it immediately crafted rules providing that any employer with religious or moral objections to Obamacare's contraceptive or abortifacient mandates could be exempted. Pennsylvania sued, and the Third Circuit held that the Trump administration's rules were invalid. The Supreme Court took the case and ruled in favor of the Trump Administration and the Little Sisters of the Poor. This case is not yet quite over and has the potential to come back. Recognizing this, the main opinion went out of its way to say that the Trump administration properly considered religious liberty in its rules, noting that federal law considers religious liberty to be an "unalienable" right. **That is the central**



President Trump and the Little Sisters of the Poor



point that we raise in every *amicus* brief dealing with religious liberty that we file. Justice Alito also went out of his way to say that the government has no place in assessing whether a person’s religious belief is doctrinally correct or not, but that the government has to respect a religious objection when it is raised. That is another point that we raise often as well.

Second, the Supreme Court rendered a favorable decision in *Espinoza v. Montana Department of Revenue*. In this case, Montana had enacted what was essentially a school voucher program, but Montana’s constitution prohibited state funds from being spent on religious schools. This provision is known as the “Blaine Amendment,” named after the senator who tried to introduce this Amendment at the federal level. It was also born out of a desire to discriminate against Catholics. The Court held that Montana’s Blaine Amendment violated the Federal Constitution’s Free Exercise Clause. ***This decision opens the doors for private Christian schools across the country to be eligible for these programs.*** The Court’s opinion and Justice Alito’s concurrence reflected some of the points we made in our brief.

Third, the Court issued a favorable decision in *Our Lady of Guadalupe v. Morrissey-Berru*. In that case, a Catholic school had fired a teacher who was responsible for teaching Catholic doctrine and had allegedly performed poorly, but the teacher claimed she was fired because of her age. The Supreme Court agreed to hear the case, asking whether the school’s actions were protected by the “ministerial exception” to generally applicable employment laws. The ministerial exception is based on the Religion Clauses of the First Amendment. The courts have reasoned that religious organizations must have the right to hire and fire “ministers” according to their own religious standards. In ruling for the school in this case, the Supreme Court held that the courts need to look to what an employee does in considering whether he or she is a “minister.” Justices Thomas and Gorsuch agreed, but reflecting the central point of our *amicus* brief, they said that ***civil courts need to defer to a religious organization’s determination of whether someone is a minister or not.*** The main opinion gave the ministerial exception more protection than it had before, so that was a step in the right direction.

III. Preparing for Mask Lawsuit

At the time of this report, Alabama’s Governor and State Health Officer have issued state-wide orders requiring every person to wear a mask in public. The Foundation believes that this is an improper exercise of legislative power by the executive branch and is preparing to sue to enjoin its enforcement. Judge Moore,

who will be lead counsel on the case, will also argue that forcing healthy people to wear masks is an encroachment on personal liberty that needs to be checked.

This is the kind of work we do, but we can only do it with your help! In order to support our ministry, **will you please support our ministry with a tax-deductible donation of \$35, \$50, \$100, or even \$500 today?**

IV. Conclusion

Your generosity has enabled us to take what is perhaps the most important religious liberty challenge to COVID-19 orders that the Country has seen. We look forward to continuing the fight for religious liberty, the right to life, and freedom from arbitrary government action in the coming months. Thank you again for your generosity, and may the Lord bless you as you have blessed us.

Sincerely,

A handwritten signature in cursive script that reads "Kayla Moore".

Kayla Moore, President