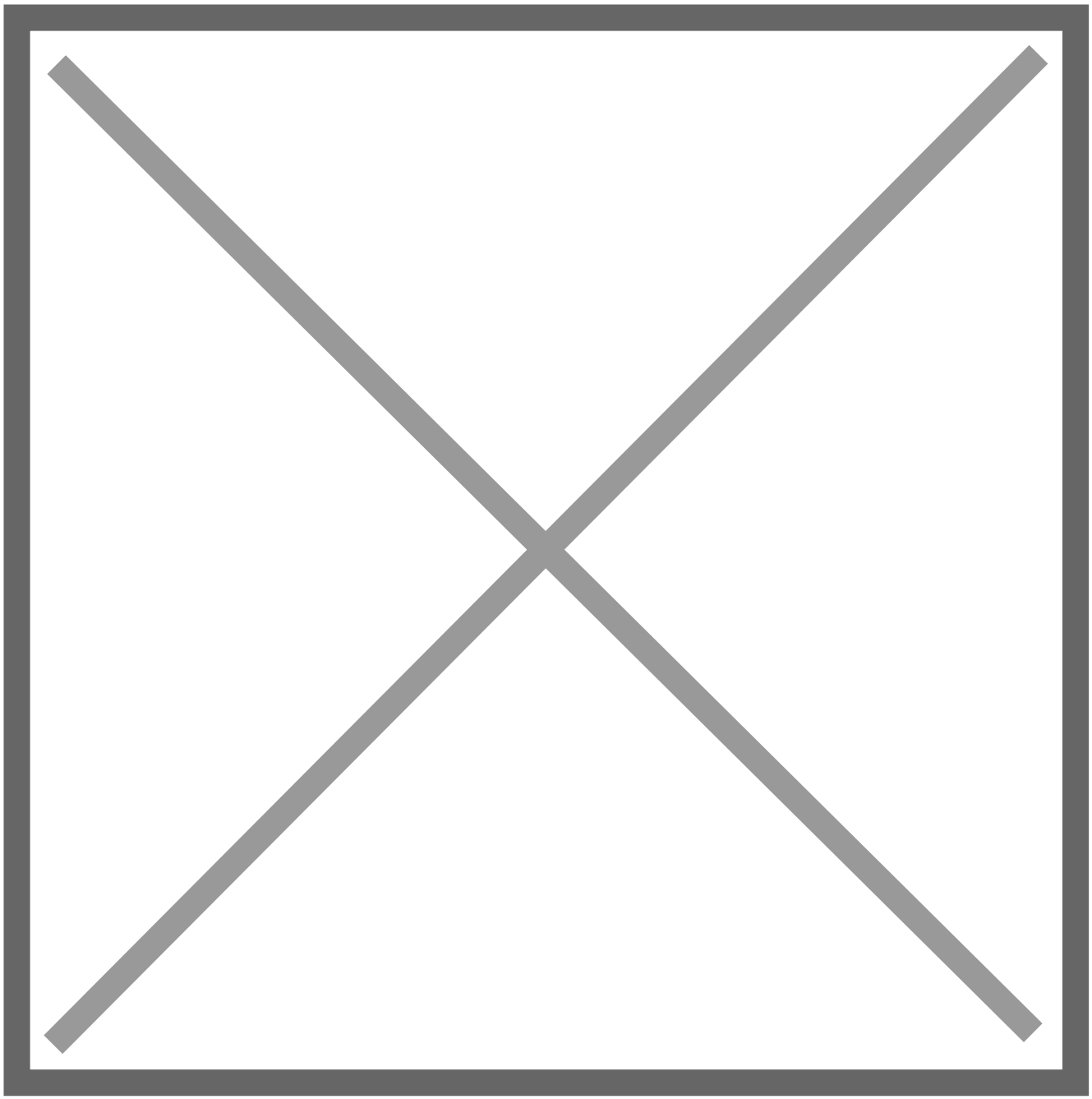
News



The Supreme Court is seen in Washington June 7, 2022. (CNS photo/Tyler Orsburn)



Carol Zimmermann

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The Supreme Court begins its new term Oct. 3, jumping right back into the fray with cases that take on affirmative action, voting, immigration, the environment and freedom of speech.

This term will include a new member, Justice Ketanji Brown Jackson, replacing Justice Stephen Breyer, who retired at the end of last session. It also will be the first time the public will be allowed back inside the court since the start of the pandemic.

In late September, the court had not announced if it will continue to provide live audio of oral arguments.

Another change is outside. Barriers around the court since May -- after protests erupted following a leak of the court's draft opinion on its Dobbs decision -- have now been removed. The investigation into that leak, ordered by Chief Justice John Roberts, is still continuing.

For now, the court has agreed to hear 27 cases and has scheduled 18 of them.

In the weeks leading up to the court's new session, law schools and think tanks have presented previews of big cases coming up and speculation on how the justices might respond.

Adam Liptak, a Supreme Court reporter for The New York Times, who moderated a few of these panels, pointed out in a Sept. 15 preview by the American Constitutional Society, that the court was not taking a breather after just finishing "a tumultuous term."

And this term, as in many previous sessions, Catholic leaders have something to say about major cases coming up.

One case getting a lot of attention is *303 Creative v. Elenis* about a Colorado graphic designer who does not want to create wedding websites for same-sex couples based on her Christian beliefs about marriage. The case, which does not have a date yet for oral arguments, is similar to the 2017 case involving a Colorado baker who refused to make a custom wedding cake for a same-sex couple based on his religious beliefs.

The U.S. Conference of Catholic Bishops, joined by the Colorado Catholic Conference and other religious groups, are siding with the designer as they did with the baker five years ago.

In an amicus brief they said this case gives the court the chance to clarify free speech issues it said the court fell short of doing in the previous case, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

In a Sept. 21 court preview by the Federalist Society, one panelist described the website case as a sequel to the court's bakery decision and noted that the initial case "didn't actually address the big speech issues at play" and instead took an "off ramp narrowly in favor of the baker on very established religious liberty grounds."

"Here we have a new court," Amanda Shanor, assistant professor of legal studies and business ethics at the Wharton School at the University of Pennsylvania, continued.

One difference is that in the current case, the artist, Lorie Smith, is not fighting a specific incident, as was the baker who denied baking a custom cake for a same-sex couple. Smith wants the court to weigh in before she is even asked to design a website for a same-sex couple.

Even though she does not wish to provide a service based on her Christian beliefs about marriage, the case hinges on her freedom of speech claim.

Shanor said Supreme Court preview panels in 2017 likely didn't predict the baker winning, but now she already is pretty sure the court will likely rule in the artist's favor and said the case could have broad implications about who can be viewed as an artist.

The USCCB's brief said there is a "pressing need for the court to clarify how the compelled speech doctrine applies to wedding-vendor cases and other disputes." It urged the justices to do what they have done in the past: "Apply the Free Speech Clause to protect religious speech, thereby strengthening liberty not just for the religious but for all society."

It also said the current case "provides an appropriate and especially important opportunity to invoke free speech protections again to address the ongoing tensions in wedding-vendor cases and in the current cultural context more broadly" and implored the court to "protect individuals from compelled speech and to provide space in the public square for minority voices."

Other groups that filed briefs on behalf of the wedding vendor included Catholicvote.org, the Thomas More Society, the Catholic League for Religious and Civil Rights and the Becket Fund.

DignityUSA, an unofficial Catholic support group for gay Catholics and their families, and New Ways Ministry, a Catholic pastoral outreach to LGBTQ people and their families, joined a brief filed by 30 religious and civil rights groups opposing the graphic artist's case.

"Carving out this broad exemption would allow public businesses to legally exclude customers based on their identities," it said, adding that "instead of safeguarding every citizen's right to buy goods and services from businesses open to the public," the proposed exemption "would further hurt the very people these civil rights laws were designed to protect."

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Another hot-button topic before the court this year involves affirmative action with two separate cases -- from Harvard University and the University of North Carolina -- challenging the way higher education institutions use race as a factor in their admission process.

The court chose to hear the two challenges Oct. 31 separately since Jackson recused herself from the Harvard case because she just recently finished serving a six-year-term on the university's board of trustees.

Georgetown University filed an amicus brief with 56 Catholic colleges and universities urging the court to uphold affirmative action in admissions in these cases that challenge a 40-year legal precedent.

The brief, joined by the University of Notre Dame, the College of the Holy Cross, DePaul University and Villanova University, among others, said the right to consider racial diversity in admissions is essential to their academic and religious missions and is "inextricably intertwined" with their religious foundations.

The brief also argued that this right is rooted in the First Amendment's guarantee of free speech and free exercise of religion, particularly for Catholic higher education institutions, whose ability to have discretion in how they choose students is critical to their religious missions.

The challengers in both cases are urging the justices to overrule their 2003 decision in *Grutter v. Bollinger*, a ruling that said the University of Michigan could consider race in its undergraduate admissions process as part of its efforts to obtain a diverse student body.

Catholic leaders and immigration groups also will be paying attention to *United States v. Texas*, which does not have an argument date yet.

The case will once again examine the executive branch's authority to set immigration policy, criticized by Texas and Louisiana leaders as too lenient. It specifically challenges federal policy that prioritizes certain groups of unauthorized immigrants for arrest and deportation.

In the last term, the court ruled 5-4 in *Biden v. Texas* that the administration could end the Trump-era "Remain in Mexico" policy, or the Migrant Protection Protocols, that required people seeking asylum at the southern U.S. border to stay in Mexico until their asylum case could be heard.

Another Texas case, on the death penalty, has long had the attention of Texas Catholic bishops, Catholic opponents of capital punishment, as well as celebrities. The case, *Reed v. Goertz*, argued Oct. 11, will examine when prisoners can pursue

post-conviction claims for DNA testing of crime scene evidence.

Rodney Reed, sentenced to death more than 23 years ago for the murder of 19-year-old Stacey Stites, has maintained his innocence and his attorneys from the Innocence Project have brought forward crime scene evidence, not tested for DNA, that they say implicates someone else.

In 2019, five days before he was scheduled to be executed, the Texas Court of Criminal Appeals granted an indefinite stay of Reed's execution and said it was sending his case back to trial court for further review.

Sr. Helen Prejean, a Sister of St. Joseph of Medaille, who is a longtime opponent of the death penalty, has been drawing attention to Reed's case for several years, citing lack of evidence of his guilt.

Similarly, Bishop Joe Vasquez of Austin, Texas, said in a 2019 statement that if Reed's execution proceeds, "there is great risk the state of Texas will execute a man who is innocent of this crime while allowing the guilty party to go free."

Other big cases before the court this term involve voting rights, the Clean Water Act and a challenge to a California animal welfare law.

The court starts its new session amid low public support. A Gallup poll in June found just 25% of the public have confidence in the court.

A poll by Marquette University Law School this September found 40% of adults approve the job the court is doing, while 60% disapprove. A similar poll conducted by the Milwaukee Jesuit-run university in July showed 38% of adults favored the court's work and 61% disapproved. Both results were down from court approval the poll found in 2020 and early 2021.