



The Supreme Court's Religious Liberty Cases: Constitutional vs Statutory Claims

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October 13, 2020

Private Religiously Motivated Conduct: Rehnquist Court

Case Name	Year	Issue	Conduct Protected?	Vote Margin	Statute Or 1 st Am?
Amos	1987	Title VII religious exemption – gym janitor	Yes	9-0	Statute
Mergens	1990	Equal Access Act (equal access to school facilities)	Yes	8-1	Statute
Smith	1990	Free Exercise Clause – peyote	No	4-5	1 st Am
Lukumi	1993	Free Exercise – animal slaughter law impacting Santeria	Yes	9-0	1 st Am
Lamb’s Chapel	1993	Equal access to school facilities – Establishment Clause defense	Yes	9-0	Statute
City of Boerne	1997	Validity of RFRA as to states – landmarking	No	3-6	Statute
Dale	2000	Scouts’ right to exclude openly gay scout leaders	Yes	5-4	1st Am
Good News Club	2001	Equal access to school facilities – Establishment Clause defense	Yes	6-3	Statute
Zelman	2002	Religious school vouchers OK under Establishment Clause	Yes	5-4	Statute
Locke	2004	Exclusion of aspiring ministers from college aid program	No	2-7	1 st Am
Cutter	2005	Constitutionality of RLUIPA prisoner protection provisions	Yes	9-0	Statute
		Percent in which conduct protected – overall	8/11, 73%		
		Percent in which conduct protected – statutory claims			6/7, 86%
		Percent in which conduct protected – constitutional claims			2/4, 50%

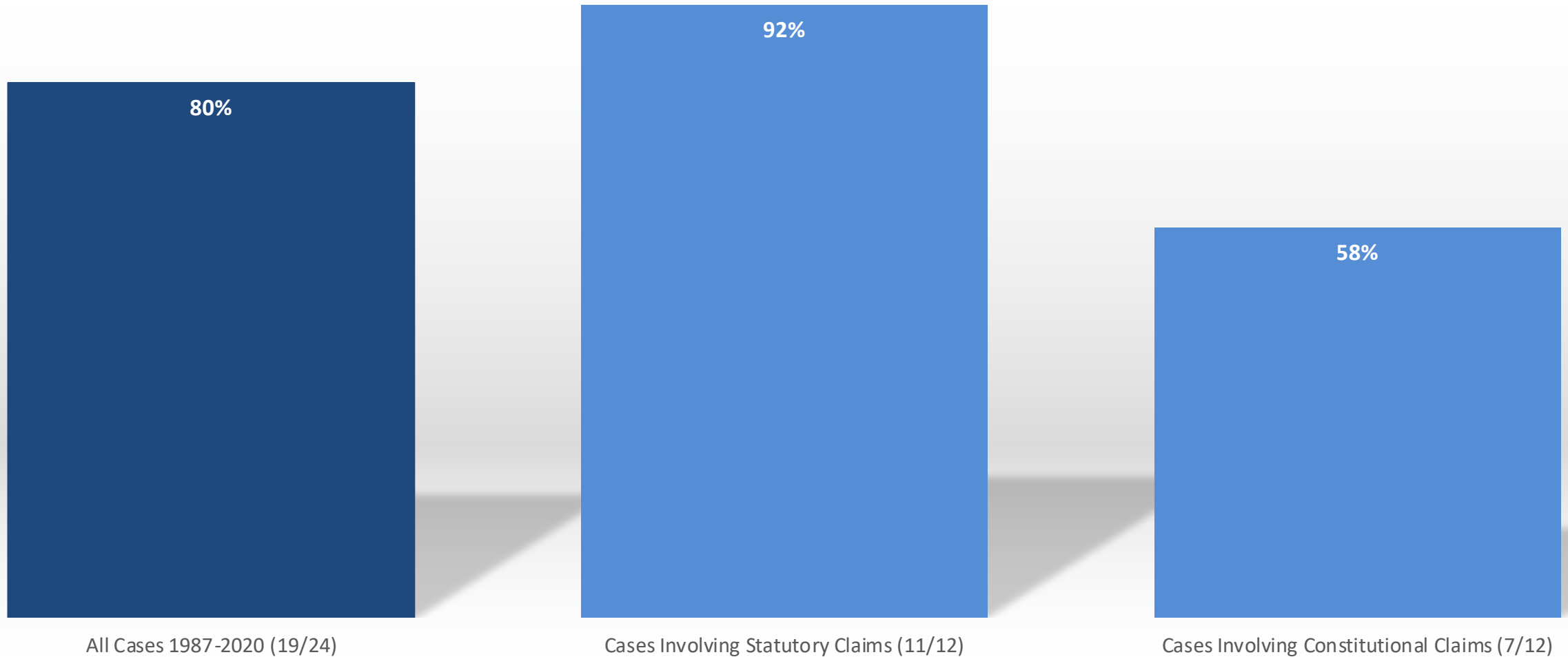
Private Religiously Motivated Conduct: Roberts Court

Case Name	Year	Issue	Conduct Protected?	Vote Margin	Statute Or 1 st Am?
O Centro Espirita	2006	Protection of hallucinogenic tea under RLUIPA	Yes	9-0	Statute
CLS v Martinez	2010	Religious criteria for club leaders—e.g. sexual conduct	No	4-5	1 st Am
Hosanna-Tabor	2011	1 st Am ministerial exemption – alleged disability discrimination	Yes	9-0	1 st Am
Hobby Lobby	2014	RFRA exemption from contraception mandate	Yes	5-4	Statute
Holt	2015	RLUIPA protection for inmate beard	Yes	9-0	Statute
Abercrombie	2015	Title VII employer accommodation requirement (knowledge req)	Yes	8-1	Statute
Trinity Lutheran	2017	1 st Am forbids discrimination because of religious status	Yes	7-2	1 st Am
Masterpiece	2018	1 st Am forbids anti-religious animus	Yes	7-2	1 st Am
Espinoza	2020	1 st Am forbids discrimination because of religious status	Yes	5-4	1 st Am

Private Religiously Motivated Conduct: Roberts Court (cont'd)

Case Name	Year	Issue	Conduct Protected?	Vote Margin	Statute Or 1 st Am?
S. Bay Pent. Church	2020	Covid-19 orders can burden religious belief	No	5-4	1 st Am
Little Sisters	2020	Gov't can make exemptions to contraception mandate	Yes	7-2	Statute
Our Lady	2020	1 st Am ministerial exemption – alleged disability discrimination	Yes	7-2	1 st Am
Calvary Chapel	2020	Covid-19 orders can burden religious belief	No	5-4	1 st Am
		Percent in which conduct protected - overall	10/13, 86%		
		Percent in which conduct protected – statutory claims			5/5, 100%
		Percent in which conduct protected – constitutional claims			5/8, 63%

Scorecard of all Cases 1987-2020 and Comparison of Statutory and Constitutional Claims



Scorecard of Sex-related Cases 1987-2020 and Comparison of Statutory and Constitutional Claims

