

On Supreme Court docket: Beards, church signage, and Jerusalem

by [Richard Wolf](#) in the [October 29, 2014](#) issue

A Christian pastor in Arizona, a Muslim prisoner in Arkansas, and an 11-year-old Jewish boy born in Jerusalem will present the Supreme Court with three chances in the next few months to rule on cases with religious overtones.

“It shows how intertwined religion is with political life,” said Marc Stern, general counsel for the American Jewish Committee. “As much as one talks about separation of church and state, it’s not so simple to disentangle sometimes.”

Good News Presbyterian Church in Gilbert, Arizona, lives on a shoestring. Its Sunday services are held at a senior living facility. In the past, it used an elementary school.

The church, which has only a couple dozen members, is heavily dependent on signs posted around town to advertise its service hours and location. Under Gilbert’s signage code, those temporary directional signs are dwarfed by others that can be much larger and stay on public property much longer—political campaign signs, for instance.

For six years, the church and its pastor, Clyde Reed, have waged a legal battle against the town for equal treatment. Its free-speech claim is that noncommercial signs should be treated similarly. Although political signs can be as large as 32 square feet and stand for up to five months in some cases, the church’s signs are limited to six square feet and to being posted no more than 12 hours before each service.

Though the dispute focuses only on the town signage code, the church’s lawyers from Alliance Defending Freedom, which focuses on religious freedom issues, say it applies to billboards, news racks, picketing, cable broadcast signals, and video games.

The town says the restrictions are based on the reasons for posting signs—and that elections are different from directions.

The U.S. Court of Appeals for the Ninth Circuit sided with the town in a divided ruling.

Judge Paul Watford, who was named to the bench by President Obama and is a potential Supreme Court nominee, dissented. He noted that the time limitation on Good News's signs relegates them mostly to darkness.

The town treats political and ideological speech as more valuable, Watford said, "and therefore entitled to greater protection from regulation than speech promoting events sponsored by non-profit organizations. That is precisely the value judgment that the First and 14th Amendments forbid Gilbert to make."

The Supreme Court has been particularly sensitive to the perception that religious speech is discriminated against, said Paul Smith, chair of appellate practice at Jenner and Block law firm.

Gregory Holt, also known as Abdul Maalik Muhammad, brought his suit under the Religious Land Use and Institutionalized Persons Act, passed unanimously by Congress in 2000. Like the Religious Freedom Restoration Act of 1993, the statute is intended to protect religious rights.

He convinced the Supreme Court to hear his case with a 15-page, handwritten petition, something the justices wouldn't normally look at.

Holt's grievance stems from the Arkansas Department of Corrections rule prohibiting beards unless medically required—a policy more than 40 other prison systems do not share. Many Muslims wear beards as part of their religious faith; Holt has agreed to keep his no longer than a half inch.

"This is a matter of grave importance, pitting the rights of Muslim inmates against a system that is hostile to these views," he wrote in his petition.

The state argues that long beards can be used to hide weapons and contraband.

Both the federal district and appeals courts ruled against Holt, even though a magistrate who heard testimony said it was "almost preposterous" to think he could hide a weapon in his beard. The judges reasoned that Holt had been granted several other religious rights, such as a prayer rug, a special diet, and holiday observances, and they deferred to the state's judgment about its security needs.

The federal government and 16 religious and law enforcement groups have lined up behind Holt, and the Justice Department cited what it called the state's "exaggerated fears or mere speculation" about security.

A third case is that of Menachem Binyamin Zivotofsky, born in 2002 in Jerusalem, a holy city claimed by both Israelis and Palestinians—and not recognized by the U.S. government as part of any country.

Under long-standing U.S. policy, Zivotofsky's birthplace was listed on his passport as "Jerusalem"—period. His parents went to court in 2003 to change it to "Jerusalem, Israel." They later agreed to settle for simply "Israel."

For more than a decade, the family has been at the center of a legal battle between the executive and legislative branches that has had judges digging through founding documents and researching policies dating back to George Washington's administration.

"The status of the city of Jerusalem is one of the most contentious issues in recorded history," the U.S. Court of Appeals for the D.C. Circuit noted last year.

Congress passed a wide-ranging foreign relations law in 2003 requiring that Israel be recorded as the place of birth for Americans born in Jerusalem, if they request it. President George W. Bush indicated he would not abide by that provision, which runs counter to U.S. policy in the Middle East. President Obama has stuck by that position.

Until now, federal courts have sided with the president. Though Congress has a role to play in passports and immigration, courts have ruled that presidents have the power to recognize foreign nations.

The law passed by Congress "runs headlong into a carefully calibrated and long-standing executive branch policy of neutrality toward Jerusalem," the appeals court ruled. —*USA Today*

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