



**The Washington Flyer  
October 30, 2020**

*“Let each citizen remember at the moment he is offering his vote that he is not making a present or a compliment to please an individual—or at least that he ought not so to do; but that he is executing one of the most solemn trusts in human society for which he is accountable to God and his country.”*

*Samuel Adams*

**Senate Confirms Amy Coney Barrett as Justice of the Supreme Court**

On Monday, October 26, [the Senate voted 52-48 to confirm](#) Amy Coney Barrett as the newest Associate Justice of the Supreme Court. The vote was along partisan lines except for Sen. Susan Collins (ME) who broke with the Republicans to vote against Barrett. The confirmation came exactly one month after President Trump announced Judge Barrett as his third nominee to the Supreme Court to fill the seat recently vacated by late Justice Ruth Bader Ginsburg. True to his word, Senate Majority Leader Mitch McConnell (KY) led a determined process to confirm Justice Barrett before election day, [cementing his reputation](#) during the past four years of steadily remaking the judiciary to confirm conservative, originalist judges to the courts. Senate Judiciary Chairman Lindsey Graham (SC) led an uneventful Senate hearing two weeks ago, during which time no new revelation came out about Judge Barrett. After the requisite thirty hours of debate held over the weekend, Majority Leader McConnell called the vote on Monday night. Justice Clarence Thomas administered the constitutional oath of office to Justice Barrett, who requested that he perform the traditional ceremony, while Chief Justice John Roberts administered the judicial oath the next day.

As Justice Barrett joins the Court, she will take part in several key cases slated for the 2020–21 term. On November 4, just one day after the election, the Court will hear oral arguments in [Fulton v. City of Philadelphia](#), a case in which two foster home parents from Catholic Social Services (CSS) are suing the city of Philadelphia to allow them to continue fostering children in need of loving homes in the city. The case began in 2018, when Philadelphia ended its 100-year partnership with Catholic Social Services because the religious organization holds a biblical view on the nature of marriage. Philadelphia stated that CSS violated the city’s non-discrimination ordinance when it hypothetically could not endorse or support same-sex couples by placing children in their care. This case has important implications for the ability of faith-based organizations to continue pursuing their religious mission without being persecuted or ostracized by the state. The Court will decide in another case concerning religious liberty in [Uzuegbunam v. Preczewski](#). Chike Uzuegbunam is a college student at George Gwinnett College who was relegated to sharing the gospel only within the campus’s “free speech zone,” which made up a tiny portion of the campus. When he tried again to share his faith, the college threatened him with arrest for “disturbing the peace.” Chike is challenging the constitutionality of the public university’s policies that restricted his religious free exercise and free speech rights. In addition to these cases, Justice Barrett also fills the [crucial ninth seat](#) to consider any cases arising from a potentially prolonged presidential election, such as the case in 2000 that settled the election between George W. Bush and Al Gore.

With these important cases and others on the docket for the next term, many hope that Justice Barrett will begin her work on the Supreme Court ready to stand for constitutional principles in whatever case arises before her.

### **Oregon Christian School Challenges Overreaching COVID Restrictions**

A Christian school in Pendleton, Oregon, is suing the state over its overreaching COVID-19 restrictions that unfairly target Christian schools. In [Hermiston Christian School v. Brown](#), the school challenges Governor Kate Brown's order that forced Hermiston Christian School to remain closed even though it allowed public schools in the same county with 75 students or fewer to hold in-person classes. According to the brief, Hermiston was told during the summer that it could resume in-person classes. Accordingly, the school prepared for in-class instruction, rehired its staff, and complied with the state and local health guidelines. Although the Oregon Department of Education approved the school as a childcare facility, citing its "very clean and organized" facility and noting that the school was "following the Health and Safety Guidelines," the very same department refused to allow the school to teach students spending time at the school. Alliance Defending Freedom (ADF), a Christian legal group representing the school, noted that the motivation for Governor Brown's decision could have stemmed from one of the governor's spokespersons, who feared a "mass exodus" from public schools if private schools were allowed to reopen. ADF Senior Counsel David Cortman stated, "Gov. Brown's personal preference for public over private education does not permit her to discriminate against faith-based schools. . . . Public health crises do not suspend the Constitution or permit elected leaders to favor secular public schools by granting them unique exceptions."

### **Vermont Families Charge Religious Discrimination in School Choice Program**

Three Vermont families have [filed a lawsuit](#) against the state of Vermont, charging the state's town "tuitioning" system is discriminatory by limiting parents' options to only non-religious schools. The town tuitioning program was created in 1869 to provide families in rural areas with funds for school tuition if the town does not provide the necessary grade-level education for children in the family. In 1961, the Vermont Supreme Court ruled that allowing funds to cover religious education violated the Establishment Clause, a ruling which was revisited and overruled by the Vermont Supreme Court in 1994. However, the Vermont Agency of Education still refused to cover tuition to a religious school, thus prompting a lawsuit which resulted in another ruling by the state supreme court that the state constitution prohibited the inclusion of religious schools in the school choice program. The Institute for Justice, a firm well-known for its successful support and defense of school choice, is representing the three Vermont families in this recent lawsuit. The IJ cites the U.S. Supreme Court's recent decision in [Espinoza vs. Montana Department of Revenue](#), in which the Court ruled that, based on the Free Exercise Clause of the U.S. Constitution, it is unconstitutional to exclude religious schools from participation in a neutral public program, like a school choice program, solely on the basis that the school is religious. In [explaining the case](#), the IJ emphasizes that "religion-inclusive educational choice programs facilitate, rather than hinder, the religious and parental liberty protections of the U.S. Constitution."

### **In Case You Missed It:**

[Weekly Market Update](#) provided by Jeff Beach of the [AACS Investment Team at Merrill Lynch](#)

[Voting for School Choice](#)

[White House Report: Expanding Educational Opportunity Through Choice and Competition](#)

[Private Schools Outpace Public Schools in Putting Kids on the Path to Marriage](#)