

CONFERENCE REPORT
ICLRS: FULTON, PAVEZ AND THE FUTURE OF THE RELIGIOUS FREEDOM IN THE
AMERICAS

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<https://www.iclrs.org/fulton-pavez-and-the-future-of-religious-freedom-in-america/>

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Introduction

The Fulton, Pavez, and the Future of Religious Freedom in the Americas webinar held a panel of speakers who attempted to answer the question, “What is the future of religious freedom in the Americas?” This panel was made up of mostly speakers from Latin countries who gave their answers based on two court cases: *Fulton v. City of Philadelphia* and *Pavez v. Chile*. Both cases focused on conflicts between religious freedom and LGBTQ+ rights. Event was mediated by panelist Tomas Henriquez.

Mike Lee

Mike Lee, a Republican Utah State Senator, shared how the future of religious freedom in the Americas is being undermined. In his discussion, Lee used a thirty year old court decision to discuss how *Fulton v. The City of Philadelphia* may have been a missed opportunity. This case was *Employment Division v. Smith*, where an anomaly occurred that judicially granted exemptions from generally applicable laws. This related to the Fulton case, because in Lee’s perspective these were victimless cases and Fulton was an opportunity for justices to overturn the Smith case, but no one was willing to do so. Overall, the counter argument that Lee encountered from Justice Barrett was that there was nothing to replace the Smith ruling with, and ensuing an overturn there would be an empty ruling to fill. Lee closed in excitement for more discussion on the *Paves v. Chile* case that could potentially answer the conflict of *Fulton v. City of Philadelphia*.

Mike Lee also responded to two questions during the panel; “Do you believe a trend of rising religious affiliation will help or harm religious liberty in the United States?” and “What role do you see legislators assuming to protect religious freedom?” His response to the first question stated that religious liberty protects those who decide to practice religion as well as those who decide not to be religious. As more people become less religious, the religious will become a minority and to protect religious freedoms, “we” need to agree to defend them. His second response, he urged the audience to understand the importance of unity between all three branches of government. As there needs to be simultaneous pressure from all three. The battle for religious freedom is continuous but in the three branch system it can be won.

Branislav Marelic:

Marelic opened his discussion by stating the importance of *Pavez v. Chile*, where a catholic teacher was denied teaching rights at a church school because of her sexual orientation. In regards to the future of religious freedom in the Americas, this case holds a precedent with

current topics and decisions. In Merelic's perspective, the ruling of the Inter-American court is going to be important as this case is not going to eradicate the spiritual dimension of people, faith, question religion, or accuse the state of authoritatively taking over religion. It is important to understand the state and religion's positions in this case, and wonder, "When can the state intervene in a religious act without infringing upon the religion itself?" To understand this, history has to be seen that the state used to be religious. Yet, now religion does not justify acts of state.

The world shares common human rights, and in this case the question is if discrimination due to sexual orientation permissible. The court decision will have to be made on the grounds of if it is permissible for the teacher to teach, and that is it, or the complexity will increase. In this case it is possible that the catholic religion could be subject to limitation.

Juan G. Navarro Floria

Navarro Floria chose to focus his discussion on the Pavez case as it is an opportunity for the Inter-American court to make a statement for the first time, whereas Fulton has followed a history of the US Supreme Court defending religious freedom. Pavez v. Chile is a case of violation of religious freedom. Religious freedom has a characteristic that holds two dimensions, individual and collective, as stated in Article 12 of The Covenant. Navarro Floria believes that churches have rights and hold a standing before the court. This is not inconsistent with advisory opinion, but follows it. In this case, it is important to understand that Chile is not the accused party here, but how Chile maintains the system of continuing religious education in schools that is a religious freedom. To close, Navarro Floria explained that religion is made of worship, belief, and practice. The morality is part of religion and whoever will teach it must have a conduct that is consistent with said taught religion. The problem we see is the opposition between Pavez's choices and the teachings of the catholic church.

Montserrat Alvarado

Alvarado started with the multiple issues that the United States has had in deciding how to employ and decide who teaches the raising generation without discriminating. It is important as religious autonomy is taught, that religious freedom is a human right and a first freedom that enables dignity. Over the last few years through different cases, religious autonomy and ministerial verbiage has been founded; these cases were Hosanna Tabor, Fernanda Martinez, and Our Lady of Guadalupe. The Fulton case follows suit with these cases that in issues of gender identity you do not have to get into the church relations. In closing, Alvarado states that the hope is that Pavez will continue to analyze these important decisions.