Minority Rights, Governing Regimes, or Secular Elites: Who Benefits from the Protection of Religious and Anti-Religious Speech by the U.S. Supreme Court and European Court of Human Rights?

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# 1 - Identifying Cases of Interest

We drew on data in the Global Free Speech Repository (GFSR) to identify cases falling within our definitions of religious and anti-religious speech. The GFSR includes data on all First Amendment cases decided by SCOTUS on free expression and/or free press grounds, from the Court’s inception in 1789 through calendar year 2019. GFSR also includes data on all final judgments[[1]](#footnote-1) issued by the ECtHR regarding complaints that a signatory state violated the right to free expression set out in Article 10 of the ECHR.[[2]](#footnote-2) For the ECtHR, GFSR data cover the period from the court’s creation in 1959 to the end of 2016.

The GFSR dataset captures key characteristics of each judgment, including the identity of the speech claimant (the person whose speech is disputed in proceedings), the form and content of the disputed speech act, the legal basis for speech suppression, whether the judicial outcome protected or restricted the disputed speech, and certain key verbatim text from the speech act (where available) and the court’s judgment. Cases involving religious or anti-religious speech for the purposes of the current paper could fall within a number of GFSR coding categories, and so we searched GFSR data to identify the following sets of potentially relevant cases for review:

* All cases coded as involving speech by a religious organization or leader
* All cases where the expressive content of the speech act is coded as religious speech
* All cases where the expressive content of the speech act is coded as hate speech (main category) targeting one or more religions/religious groups (sub-category)
* All cases where the legal basis for speech suppression was coded as involving laws against religious defamation or blasphemy.
* All cases where the expressive content of the speech act is coded as political advocacy of a type commonly associated with one or more religious traditions. This includes pro-life, anti-war, and racial-egalitarian speech.
* All cases where quotes from the speech act or coders’ descriptions of it included any of a series of keywords[[3]](#footnote-3) designed to capture religious content in cases coded under other categories.[[4]](#footnote-4)

The code-based searches identified 120 ECtHR cases and 120 SCOTUS cases, while the keyword searches identified 119 ECtHR cases and 56 SCOTUS cases. The sets of search outputs overlapped significantly, with 41 cases appearing in results of both searches of SCOTUS cases, and 51 appearing in both ECtHR search results. Because the ECtHR data in GFSR ends in 2016, we also supplemented these results with our own review of judgments issued by the court from 2017-2019. Using the ECtHR’s decision database, we identified 133 merits judgments on Article 10 claims that satisfied GFSR case selection criteria.[[5]](#footnote-5)

We reviewed all cases identified by these searches to determine whether the speech at issue included religious or anti-religious speech as defined in the main text. This process led to exclusion of cases that did not involve a relevant speech act for the purposes of this paper, leaving the final sample of 58 judgments by SCOTUS and 68 issued by the ECtHR included in the analysis. These are listed in full below. Two of those judgments (one from each court) addressed more than one speech act, reaching different conclusions in response to the different fact patterns they raised. For these cases, we have coded and counted each holding separately for our analysis, producing a total of 128 distinct holdings. Note, therefore, that our unit of analysis is the *holding*, though we continue to also use the more common term “case” to refer to them here and in the article.

For the most part, the decision to include or exclude a case in our sample was straightforward. Both courts have issued multiple judgments involving overt religious expression (e.g., Kokkinakis v. Greece), political advocacy by religious actors who viewed the work as compelled by God or scripture (e.g., McCullen v. Coakley), unambiguous criticism or mockery of a religion (e.g., Burstyn v. Wilson) , or anti-religious political advocacy (e.g., Féret v. Belgium). Cases in this last category generally include speech that seeks to marginalize or denigrate one or more religious groups in the public sphere or undermine the role of religion generally, for example by advocating stringent secularism.

We excluded from the sample a number of cases flagged by our searches but which, upon further review, involved speech acts with no substantial religious or anti-religious component. For example, we excluded *Arkansas Writers Project v. Ragland* (1987) from our sample of SCOTUS cases. In this case, the publishers of a general interest magazine sought to recover taxes paid in Arkansas on printing press supplies. They claimed that the taxation scheme was unconstitutional on First Amendment grounds because it exempted newspapers and religious, professional, trade and sports journals, and treated publishers of other types of content less favorably. Although the plaintiff’s magazine published articles on a variety of topics that included religion and sports, the relevant speech acts did not consist in significant part of either religious or anti-religious expression.

Some cases required difficult judgment calls. As noted in the article, the line separating political advocacy rooted in religious or anti-religious sentiment (included in our sample) from non-religious political advocacy (excluded), is not sharp. In drawing this line, we selected all cases in which the Court’s summary of the relevant speech act noted any substantial religious content or noted background factual context clearly indicating a religious or anti-religious nexus for the political advocacy. For example, if the Court’s opinion identifies the speech claimant as a religious leader advocating political ideas clearly associated with a religious tradition, we included the case even if minimal detail is provided regarding the content of the speech act itself.

When determining whether a case was relevant for our purposes, we relied only on the information supplied in the Court’s opinions. We consulted outside sources only insofar as necessary to understand the persons and events referenced by the Court. Where a series of cases were connected, we drew relevant facts from all such judgments. For example, our sample includes seven ECtHR cases involving a single claimant, Mr. Klaus Günter Annen, engaged in advocacy against abortion, stem cell research, and euthanasia in Germany. The ECtHR’s opinions in some of these judgments indicate explicitly that Mr. Annen was associated with Christian organizations or refer to his website’s request for prayers for doctors who worked in abortion clinics. Others offer no such background that reveals this religious context, but read as a whole, it is clear that this series of cases involve advocacy inspired to a significant degree by Mr. Annen’s religious beliefs. As such, all were included in our sample.

# 2 - Coding rules

Once the sample of cases was identified, we then coded each case on a number of dimensions: the case outcome, speech type, the speaker’s religious status, and (for anti-religious speech) the status of the targeted religion. A replication dataset that includes coding for all cases is available at: LINK

**Case outcome:** Cases were coded as “pro-speech” when the court ruled that the speech suppression was unconstitutional or violated Article 10 of the ECtHR. They were coded as “anti-speech” where the court ruled against the free speech claim. Two judgments--Larissis v. Greece (1998, ECtHR) and Virginia v. Black (2003, SCOTUS)--addressed multiple speech acts, and reached mixed conclusions, upholding the speech suppression in relation to part of the disputed speech, but rejecting it in relation to another part. For these cases, we have counted and coded both holdings. When either or both holdings are listed in tables 5 - 8, these case names are supplemented with superscript text to indicate which holding–-pro- or anti-speech–-is referred to.

**Speech type:** Cases were coded as involving religious speech, anti-religious speech, or both. Most cases (117 of 128 in our sample) fall in just one category, but where a speaker is both expressing their own faith, and criticizing or disparaging another religion or its adherents, we code as both religious and anti-religious speech. For example, all U.S. cases involving cross-burnings were coded as anti-religious speech targeting minorities, given that the expressive conduct at issue desecrates a key Christian religious symbol in ways that historically connote hatred toward African Americans, Jews, and Catholics. Where a case involves cross-burnings that took place at Ku Klux Klan rallies, we also coded the speech as religious expression, given their quasi-sacramental character in this context, together with the fact that they are typically accompanied by other forms of religious devotion, including prayers and hymns.

Note that our definition of anti-religious speech requires that it involves criticism of one religion from outside that tradition - either from the perspective of a member of another religious tradition, or an irreligious or secularist perspective. This means that where a religious speaker expresses criticism of institutions, doctrine, or adherents of their own religion, this is coded as religious speech. For cases involving Christian speakers, we treat speech directed against a different denomination as anti-religious speech, but speech critical of other members of the same denomination as solely religious speech. For example, *Snyder v. Phelps* (SCOTUS, 2011) is coded as both religious speech by the extremist Westboro Baptist Church and anti-religious expression directed against Catholics. In contrast, *Albert-Engelmann-Gesellschaft mbH v. Austria* (ECtHR, 2006) is coded solely as religious speech. In that case, speakers writing from a conservative Catholic perspective criticized actions by a Catholic church official who held more progressive views, in the context of ongoing debates on church reform.

In two cases, we coded speech acts that combine religious and secular perspectives as both religious speech and secular anti-religious speech directed towards the speakers’ own religion. These cases are *Mariya Alekhina and Others v Russia* and *Lombardi Vallauri v Italy*. *Alekhina* is concerned with the hooliganism convictions of members of the feminist punk band Pussy Riot for attempting to perform a protest song entitled “Punk Prayer” from the altar of Moscow’s Christ the Saviour Cathedral. The song was styled as a prayer to the Virgin Mary, and we coded this element as religious speech. However, it also included political objections to policies of the Putin government and to the Orthodox Church hierarchy’s continued support for that regime, expressed in a provocative manner that would be offensive to many adherents. This second element was coded as secularist anti-religious speech. In *Vallauri*, a professor of Law and Philosophy at a Catholic University claimed a violation of Article 10 after his contract was not renewed because his teaching and writings were judged incompatible with Church doctrine. Given the speaker’s Catholic background and employment at a Catholic University, we coded the speech act (i.e., his teaching and scholarship) as religious speech. Because that speech included criticism of Catholic doctrine from a legal and secular perspective, we also coded it as secular anti-religious speech.

**Religious speaker status:** Speech claimants engaged in religious speech are coded as religious majorities or minorities, defined at the national level. If the documentary record identified the claimants as members of a religious/cultural minority in the United States (for SCOTUS) or the relevant European nation (for ECtHR), we coded them as such; if not, we coded them as members of the religious/cultural majority.

Identifying religious majorities and minorities is straightforward in most instances. Where the question is a closer call, we have provided sufficient contextual detail for the reader to evaluate our judgments.

**Source and targets of anti-religious speech:** For cases involving anti-religious expression, we applied these same procedures to identify the majority/minority status of the targets of the speech act. We also coded the source of the anti-religious speech as either a) an alternative faith tradition or b) secularist skepticism, critique, or hostility towards religion. For cases involving both religious and anti-religious expression, we coded majority/minority status of both speakers and targets, as well as the religious/secularist character of the anti-religious component.

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# 3 - Full Sample of Cases Identified from the ECtHR

1. Case of 97 members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia, App. No. 71156/01 Eur. Ct. H.R. (2007)
2. Case of Agga v. Greece (No. 2), App. No. 50776/99, 52912/99, Eur. Ct. H.R. (2002)
3. Case of Agga v. Greece (No. 3), App. No. 32186/02, Eur. Ct. H.R. (2006)
4. Case of Agga v. Greece (No. 4), App. No. 33331/02, Eur. Ct. H.R. (2008)
5. Case of Albert-Engelmann-Gesellschaft mbH v. Austria, App. No.  46389/99, Eur. Ct. H.R. (2006)
6. Case of Annen v. Germany, App. No. 3690/10, Eur. Ct. H.R. (2015)
7. Case of Annen v. Germany (No. 2), App. No. 3682/10, Eur. Ct. H.R. (2018)
8. Case of Annen v. Germany (No. 3), App. No. 3687/10, Eur. Ct. H.R. (2018)
9. Case of Annen v. Germany (No. 4), App. No. 9765/10, Eur. Ct. H.R. (2018)
10. Case of Annen v. Germany (No. 5), App. No. 70693/11, Eur. Ct. H.R. (2018)
11. Case of Annen v. Germany (No. 6), App. No. 3779/11, Eur. Ct. H.R. (2018)
12. Case of Aydin Tatlav v. Turkey, App. No. 50692/99, Eur. Ct. H.R. (2006)
13. Case of Balsyte-Lideikiene v. Lithuania, App. No. 72596/01, Eur. Ct. H.R. (2008)
14. Case of Brunet Lecomte and Lyon magazine v France, App. No. 17265/05, Eur. Ct. H.R. (2010)
15. Case of Catalan v. Romania, App. No. 13003/04, Eur. Ct. H.R. (2018)
16. Case of Chalabi v France, App. No. 35916/04, Eur. Ct. H.R. (2008)
17. Case of CICAD v. Switzerland, App. No. 17676/09, Eur. Ct. H.R. (2016)
18. Case of Delfi AS v. Estonia, App. No. 64569/09, Eur. Ct. H.R. (2015)
19. Case of Dilipak and Karakaya v. Turkey, App. Nos. 7942/05 and 24838/05, Eur. Ct. H.R. (2014)
20. Case of E.S. v. Austria, App. No. 38450/12, Eur. Ct. H.R. (2018)
21. Case of Erbakan v. Turkey, App. No. 59405/00, Eur. Ct. H.R. (2006)
22. Case of Fáber v. Hungary, App. No. 40721/08, Eur. Ct. H.R. (2012)
23. Case of Féret v. Belgium, App. No. 15615/07, Eur. Ct. H.R. (2009)
24. Case of Foka v. Turkey, App. No. 28940/95, Eur. Ct. H.R. (2008)
25. Case of Giniewski v. France, App. No. 64016/00, Eur. Ct. H.R. (2006)
26. Case of Glas Nadezhda EOOD and Elenkov v. Bulgaria, App. No. 14134/02, Eur. Ct. H.R. (2007)
27. Case of Gündüz v. Turkey, App. No. 35071/97, Eur. Ct. H.R. (2003)
28. Case of Güzel v. Turkey (No. 2), App. No. 65849/01, Eur. Ct. H.R. (2006)
29. Case of Hoffer and Annen v. Germany, App. Nos. 397/07, 2322/07, Eur. Ct. H.R. (2011)
30. Case of I.A. v. Turkey, App. No. 42571/98, Eur. Ct. H.R. (2005)
31. Case of Ibragim Ibragimov and Others v. Russia, App. Nos. 1413/08, 28621/11, Eur. Ct. H.R. (2018)
32. Case of Kar and Others v. Turkey (2007), App. No. 58756/00, Eur. Ct. H.R. (2007)
33. Case of Karatepe v. Turkey, App. No. 41551/98, Eur. Ct. H.R. (2007)
34. Case of Klein v. Slovakia, App. No. 72208/01, Eur. Ct. H.R. (2006)
35. Case of Kokkinakis v. Greece, App. No. 14307/88, Eur. Ct. H.R. (1993)
36. Case of Kutlular v. Turkey, App. No. 73715/01, Eur. Ct. H.R. (2008)
37. Case of Larissis and Others v. Greece, App. No. 23372/94, Eur. Ct. H.R. (1998) [TWO holdings marked PRO and ANTI]
38. Case of Leyla Şahin v. Turkey, App. No. 44774/98, Eur. Ct. H.R. (2005)
39. Case of Lombardi Vallauri v. Italy, App. No. 39128/05, Eur. Ct. H.R. (2009)
40. Case of Mariya Alekhina and Others v. Russia, App. No. 38004/12, Eur. Ct. H.R. (2018)
41. Case of Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina, App. No. 17224/11, Eur. Ct. H.R. (2017)
42. Case of Mehmet Cevher Ilhan v. Turkey, App. No. 15719/03, Eur. Ct. H.R. (2009)
43. Case of Mouvement Raëlien Suisse v. Switzerland, App. No. 16354/06, Eur. Ct. H.R. (2012)
44. Case of Murphy v. Ireland, App. No. 44179/98, Eur. Ct. H.R. (2003)
45. Case of Mustafa Erdoğan and Others v. Turkey, App. Nos. 346/04, 39779/04, Eur. Ct. H.R. (2014)
46. Case of Nedim Şener v. Turquie, App. No. 38270/11, Eur. Ct. H.R. (2014)
47. Case of Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey, App. No. 6587/03, Eur. Ct. H.R. (2007)
48. Case of Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey (No. 2), App. No. 42284/05, Eur. Ct. H.R. (2010)
49. Case of Odabaşı v. Turkey, App. No. 41618/98, Eur. Ct. H.R. (2004)
50. Case of Öllinger v. Austria, App. No. 76900/01, Eur. Ct. H.R. (2006)
51. Case of Otto-Preminger-Institut v. Austria, App. No. 13470/87, Eur. Ct. H.R. (1994)
52. Case of Paturel v. France, App. No. 54968/00, Eur. Ct. H.R. (2005)
53. Case of PETA Deutschland v. Germany, App. No. 43481/09, Eur. Ct. H.R. (2012)
54. Case of Refah Partisi (the Welfare Party) and Others v. Turkey, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98, Eur. Ct. H.R. (2003)
55. Case of S.A.S. v. France, App. No. 43835/11, Eur. Ct. H.R. (2014)
56. Case of Sekmadienis Ltd. v. Lithuania, App. No. 69317/14, Eur. Ct. H.R. (2018)
57. Case of Serif v. Greece, App. No. 38178/97, Eur. Ct. H.R. (1999)
58. Case of Şık v. Turkey, App. No. 53413/11, Eur. Ct. H.R. (2014)
59. Case of Soulas and Others v. France, App. No. 15948/03, Eur. Ct. H.R. (2008)
60. Case of Sürek and Özdemir, App. Nos. 23927/94 and 24277/94, Eur. Ct. H.R. (1999)
61. Case of Tagiyev and Huseynov v. Azerbaijan, App. No. 13274/08 , Eur. Ct. H.R. (2019)
62. Case of Tuşalp v. Turkey, App. Nos. 32131/08 and 41617/08*,* Eur. Ct. H.R. (2012)
63. Case of Ulusoy v Turkey, App. No. 52799/09, Eur. Ct. H.R. (2007)
64. Case of Unifaun Theatre Productions Limited and Others v. Malta, App. No. 37326/13, Eur. Ct. H.R. (2018)
65. Case of Varli and Others v Turkey, App. No. 57299/00, Eur. Ct. H.R. (2006)
66. Case of Verlagsgruppe News GmbH and Bobi v. Austria, App. No. 59631/09, Eur. Ct. H.R. (2012)
67. Case of Wingrove v. The United Kingdom, App. No. 17419/90, Eur. Ct. H.R. (1996)
68. Case of Yarar v. Turkey, App. No. 57258/00, Eur. Ct. H.R. (2006)

# 4 - Full Sample of Cases Identified from SCOTUS

1. Adderly v. Florida, 385 U.S. 39 (1966)
2. Bachellar v. Maryland, 397 U.S. 564 (1970)
3. Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, 482 U.S. 569 (1987)
4. Brandenburg v. Ohio, 395 U.S. 444 (1969)
5. Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)
6. Capitol Square Review and Advisory Board v. Pinette, 515 U.S. 753 (1995)
7. Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968)
8. Christian Legal Society Chapter of the University of California, Hastings College of Law v. Martinez, 561 U.S. 661 (2010)
9. Cox v. Louisiana (Cox I), 379 U.S. 536 (1965)
10. Cox v. Louisiana (Cox II), 379 U.S. 559 (1965)
11. Cox et al. v. New Hampshire, 312 U.S. 569 (1941)
12. Davis v. Massachusetts, 167 U.S. 43 (1897)
13. Dawson v. Delaware, 503 U.S. 159 (1992)
14. Edwards v. South Carolina, 372 U.S. 229 (1963)
15. Flower v. United States, 407 U.S. 197 (1972)
16. Follett v. Town of McCormick, 321 U.S. 574 (1944)
17. Fowler v. Rhode Island, 345 U.S. 67 (1953)
18. Good News Club v. Milford Central School, 533 U.S. 98 (2001)
19. Gregory v. City of Chicago, 394 U.S. 111 (1969)
20. Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981)
21. Henry v. City of Rock Hill, 376 U.S. 776 (1964)
22. International Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992)
23. Island Trees School District v. Pico by Pico, 457 U.S. 853 (1982)
24. Jamison v. Texas, 318 U.S. 413 (1943)
25. Jones v. Opelika, 316 U.S. 584 (1942)
26. Kunz v. People of State of New York, 340 U.S. 290 (1951)
27. Lamb's Chapel and John Steigerwald v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993)
28. Largent v. Texas, 318 U.S. 418 (1943)
29. Lee v. International Society for Krishna Consciousness, 505 U.S. 830 (1992)
30. Lovell v. City of Griffin, 303 U.S. 444 (1938)
31. Marsh v. Alabama, 326 U.S. 501 (1946)
32. Martin v. City of Struthers, 319 U.S. 141 (1943)
33. McCullen v. Coakley, 573 U.S. \_\_\_ (2014)
34. Minersville School District, Board of Education of Minersville School District, et al. v. Gobitis et al., 310 U.S. 586 (1940)
35. Morse v. Frederick, 551 U.S. 393 (2007)
36. Murdock v. Pennsylvania (City of Jeannette), 319 U.S. 105 (1943)
37. National Institute of Family and Life Advocates v. Becerra, 585 U.S. \_\_\_ (2018)
38. Near v. Minnesota ex rel. Olson, 382 U.S. 697 (1931)
39. New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
40. Niemotko v. State of Maryland, 340 U.S. 268 (1950)
41. Packingham v. North Carolina, 137 S.Ct. 1730 (2017)
42. Pleasant Grove City, UT v. Summum, 555 U.S. 460 (2009)
43. Poulos v. New Hampshire, 345 U.S. 395 (1953)
44. R.A.V. v. St. Paul, 505 U.S. 3777 (1992)
45. Reed v. Town of Gilbert, 576 U.S. 155 (2015)
46. Rosenberger v. Rector & VIsitors of the University of Virginia, 515 U.S. 819 (1995)
47. Saia v. New York, 334 U.S. 558 (1948)
48. Schneider v. New Jersey, 398 U.S. 147 (1939)
49. Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147 (1969)
50. Snyder v. Phelps, 562 U.S. 443 (2011)
51. Taylor v. Mississippi, 319 U.S. 583 (1943)
52. Terminiello v. City of Chicago, 337 U.S. 1 (1949)
53. Tucker v. Texas, 326 U.S. 517 (1946)
54. Virginia v. Black, 538 U.S. 343 (2003) [TWO holdings, marked PRO and ANTI]
55. Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150 (2002)
56. West Virginia State Board of Education et al. v. Barnette et al., 319 U.S. 624 (1943)
57. Widmar v. Vincent, 454 U.S. 263 (1981)
58. Wooley v. Maynard, 430 U.S. 705 (1977)

# 5 - Results for Alternate Specifications

The following tables mirror tables 9 and 10 in the article, providing results of the analysis under three alternate specifications. The three alternate analyses were undertaken to test the robustness of our findings to differing judgments with respect to the 10 cases (11 total holdings) that we coded as involving both religious and anti-religious speech. Tables 9A and 10A present results with these cases removed entirely from the analysis, tables 9B and 10B present results with them coded solely as religious speech, and tables 9C and 10C present results with these cases coded solely as anti-religious speech.

The complete list of cases and codings assigned under each of these specifications is available in the replication materials: here.

**A - Results with all cases coded as both religious and anti-religious speech excluded from analysis here**

Table 9A: Number (Percent) of Holdings Consistent with Each Theory (N=53 SCOTUS, 64 ECtHR, 117 total)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Theory** | **SCOTUS** | **ECtHR** | ***X*2** | **Total** |
| Minority Rights | 32 (60%) | 35 (55%) | p=.536 | 67 (57%) |
| Majoritarian | 21 (40%) | 29 (45%) | p=.536 | 50 (43%) |
| Secularist | 15 (28%) | 25 (39%) | p=.222 | 40 (34%) |
| Libertarian | 42 (79%) | 38 (59%) | p=.021 | 80 (68%) |

Note: Cells indicate number of holdings, as share of total holdings, consistent with each set of theoretically derived expectations, and p-values reported for chi-square test.

Table 10A: Holdings in Favor of Free Expression by Speech Type

|  |  |  |
| --- | --- | --- |
| **Speech Type** | **SCOTUS** | **ECtHR** |
| Minority Religious Expression | 28/36 (78%) | 11/16 (69%) |
| Majority Religious Expression | 9/11 (82%) | 17/27 (63%) |
| Anti-Majority Speech | 2/3 (67%) | 8/13 (62%) |
| Anti-Minority Speech | 3/3 (100%) | 2/8 (25%) |

Note: Cells indicate pro-speech judgments as share of total judgments for each category.

**B - Results with all cases coded as both religious and anti-religious speech in main analysis coded solely as religious speech here**

Table 9B: Number (Percent) of Holdings Consistent with Each Theory (N=59 SCOTUS, 69 ECtHR, 128 total)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Theory** | **SCOTUS** | **ECtHR** | ***X*2** | **Total** |
| Minority Rights | 36 (61%) | 38 (55%) | p=.497 | 74 (58%) |
| Majoritarian | 23 (39%) | 31 (45%) | p=.497 | 54 (42%) |
| Secularist | 16 (27%) | 25 (36%) | p=.271 | 41 (32%) |
| Libertarian | 47 (80%) | 43 (62%) | p=.032 | 90 (70%) |

Note: Cells indicate number of holdings, as share of total holdings, consistent with each set of theoretically derived expectations, and p-values reported for chi-square test.

Table 10B: Holdings in Favor of Free Expression by Speech Type

|  |  |  |
| --- | --- | --- |
| **Speech Type** | **SCOTUS** | **ECtHR** |
| Minority Religious Expression | 32/41 (78%) | 14/19 (74%) |
| Majority Religious Expression | 10/12 (83%) | 19/29 (66%) |
| Anti-Majority Speech | 2/3 (67%) | 8/13 (72%) |
| Anti-Minority Speech | 3/3 (100%) | 2/8 (25%) |

Note: Cells indicate pro-speech judgments as share of total judgments for each category.

**C - Results with all cases coded as both religious and anti-religious speech in main analysis coded solely as anti-religious speech here**

Table 9C: Number (Percent) of Holdings Consistent with Each Theory (N=59 SCOTUS, 69 ECtHR, 128 total)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Theory** | **SCOTUS** | **ECtHR** | ***X*2** | **Total** |
| Minority Rights | 36 (61%) | 40 (58%) | p=.727 | 76 (59%) |
| Majoritarian | 22 (37%) | 29 (42%) | p=.585 | 51 (40%) |
| Secularist | 16 (27%) | 27 (39%) | p=.152 | 43 (34%) |
| Libertarian | 47 (80%) | 43 (62%) | p=.032 | 90 (70%) |

Note: Cells indicate number of holdings, as share of total holdings, consistent with each set of theoretically derived expectations, and p-values reported for chi-square test.

Table 10C: Holdings in Favor of Free Expression by Speech Type

|  |  |  |
| --- | --- | --- |
| **Speech Type** | **SCOTUS** | **ECtHR** |
| Minority Religious Expression | 28/36 (78%) | 11/16 (69%) |
| Majority Religious Expression | 9/11 (82%) | 17/27 (63%) |
| Anti-Majority Speech | 3/4 (74%) | 13/18 (72%) |
| Anti-Minority Speech | 7/8 (88%) | 2/8 (25%) |

Note: Cells indicate pro-speech judgments as share of total judgments for each category.

1. Since GFSR includes only final judgments, cases decided by both a Chamber and (on appeal) the court’s Grand Chamber are included only once. For such cases, the Grand Chamber judgment is included and the Chamber judgment excluded. [↑](#footnote-ref-1)
2. For SCOTUS, GFSR’s key case selection rule is the presence of a substantive holding on a First Amendment free expression claim, including both free speech and press. For ECtHR, GFSR contains all judgments in which (1) the Court determined one or more claims that a state had violated the applicant’s rights under ECHR Article 10, or (2) such an Article 10 claim was made, but the Court deemed it unnecessary to reach a judgment because the matter was more appropriately determined under the overlapping Article 9 freedom of religion or Article 11 freedom of association. For these cases, the GFSR dataset codes the Court’s holding under Article 9 or Article 11 as the outcome of the free expression dispute. Cases involving substantively similar questions that were raised solely under Article 9 or 11 are excluded from GFSR and from our sample. [↑](#footnote-ref-2)
3. The keywords were as follows: *Religion, Muslim, Imam, Prophet, Jew, Islam, Moham, Muham, Christ, Catholic, Protestant, Orthodox, Koran, Bible, Priest, Rabbi, Monk, Monast, Seminary, Nun, Church, Synagogue, Mosque, Temple,* and *Torah*. Truncated forms were used where they would identify related words that share the search text - for example searching with “monast” allows results including either “monastic” or “monastery”. [↑](#footnote-ref-3)
4. This final search was intentionally broad, and generated numerous results that were ultimately judged to fall beyond the scope of the current paper. However, it allowed us to identify cases with relevant characteristics that did not closely align with particular codings for the speaker or speech act. This included, for example, defamatory speech that may be broadly “anti-religious” speech for our purposes (e.g. where directed towards a religious leader), without constituting hate speech. It also served as a check for relevant cases that had been excluded from more specific searches due to coding error. [↑](#footnote-ref-4)
5. A searchable database of ECtHR decisions is available online at <https://hudoc.echr.coe.int/>. [↑](#footnote-ref-5)