

Electronic Alert

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U.S. Supreme Court's Protection of Religious Rights

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Today, the U.S. Supreme Court issued two long-awaited opinions which arguably expanded the protection of religious rights in two ways: expanding the “ministerial exception” as it applies in certain employment discrimination suits, and upholding the current administration’s rules expanding the religious exemption from the Affordable Care Act’s contraceptive mandate which permits some private employers to decline to offer birth control through their health plans.

Clarification of “Ministerial Exemption”

In *Our Lady of Guadalupe School v. Morrissey-Berru* and *St. James School v. Biel*, the Supreme Court clarified the “ministerial exception” as it applies to teachers of religious schools.

The case involved two teachers at two different Los Angeles Roman-Catholic grade schools. One teacher asserted age discrimination in her termination and the other claimed disability discrimination. In both cases, the employer asserted the “ministerial exception” which protects the rights of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”

While religious employers are not immune from all secular laws, the First Amendment protects their autonomy with respect to internal management decisions that are essential to the institution’s central mission, including selection of the individuals who play key roles. Under the “ministerial exception,” courts must stay out of employment disputes involving those holding important positions within religious institutions.

There is no rigid formula to determine who may be considered a minister. Instead, courts take all relevant circumstances into account to determine whether each particular position implicates the exception. The key consideration, and what matters most, is what an employee does.

In today’s decisions, the Court examined whether Catholic schools could apply the ministerial exception to general education teachers. The schools argued that religious teachings, practices, and values were incorporated into their curriculum, employment agreements, faculty handbooks, and evaluation systems. Both schools expressly stated the teachers played a vital part in carrying out the mission of the church and had important religious duties, including teaching classes about Catholicism, leading prayers, and participating in mass with students. The schools’ definition and explanation of the teachers’ roles were important to the Court’s holding.

The Court concluded, “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes

between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." In so holding, the Court rejected the argument that before the ministerial exception could be applied there would need to be a ministerial title, a rigid religious training requirement, a requirement that the employee hold themselves out as a minister for tax purposes, or a requirement for the employee to be a practicing member of the religion.

Two justices dissented.

Expanded Religious Exception to ACA Contraceptive Mandate Upheld

In its 7-2 decision in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, the Court focused more on administrative procedures than religious rights in upholding the Administration's rules that expanded the types of employers who could claim religious exemptions from the contraceptive mandate to include publicly traded companies and universities.

The Affordable Care Act requires health plans to provide coverage for contraception, but there is an exemption for religious employers, such as churches. In 2018, the Administration promulgated rules that expanded the religious exemption to include an employer that objects, based on its sincerely held religious beliefs or a moral objection, to offering coverage or payment for contraceptive services. Pennsylvania and New Jersey challenged the rules as unlawful, asserting the agencies lacked statutory authority to expand the religious exemption and failed to adhere to administrative procedures in promulgating the rules.

The Court held that the government "had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections." The Court explained that the agencies have "sweeping authority" under the ACA "to craft a set of standards defining the preventive care that applicable health plans must cover" and it also has the power to "identify and create exemptions from its own guidelines."

If you have questions about religious rights in the workplace or how this expanded exception impacts your business, contact Amy Angel at 503-276-2195 or aangel@barran.com.