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ALERT

Two Key Supreme Court Religion Decisions: Court Clarifies Scope of ‘Ministerial Exception’ and Rules that Employers Can Exclude Birth Control from Their Health Plans

By Bennett Pine and John P. Lacey Jr.

The United States Supreme Court issued two key decisions last week. The first expanded the scope of the ministerial exception to laws governing the employment relationship, affording religious-based institutions freedom in making personnel decisions. The second concerned the requirement in the Affordable Care Act that health plans cover birth control as free preventive care, holding that employers can exclude birth control from their health care plans if they oppose contraception on moral or religious grounds.

Our Lady of Guadalupe School v. Morrissey-Berru

In this case the Supreme Court considered employment discrimination claims brought by two elementary school teachers at Catholic schools in Los Angeles. Writing for the 7-2 majority, Justice Alito reversed the Ninth Circuit holding that pursuant to the ministerial exception, courts are “bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.”

The first of the two cases before the Court involved a teacher employed at a Roman Catholic primary school in the Archdiocese of Los Angeles. The teacher, Agnes Morrissey-Berru, taught all subjects, including religion. The employment agreement stipulated that the school’s hiring and retention decisions would be guided by its Catholic mission, and that the teacher, pursuant to her employment agreement, was expected to promote the Catholic faith.

In 2014, the school asked Morrissey-Berru to switch from a full-time position to a part-time position. The following year, the school declined to renew her employment contract. Morrissey-Berru filed suit against

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the school under the Age Discrimination in Employment Act of 1967, arguing the school had demoted her based upon her age.

The second case involved a second teacher, Kristen Biel, employed by a Catholic primary school in Los Angeles. Biel primarily served as a substitute teacher, although for one year she served as a full-time fifth grade teacher. She too taught all subjects, including religion. The teacher's employment agreement required her to serve the Catholic mission, imposed certain commitments regarding religious instruction, and explained that performance would be reviewed on those bases.

After a full year of teaching, the school declined to renew Biel's contract. Biel sued, claiming she was discharged in retaliation for requesting a leave of absence to obtain treatment for breast cancer.

The Court noted that 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." Further, the Court opined that for purposes of determining whether the ministerial exception applies, what matters is "what an employee does," not the employee's title. To that end, the Court held that although the teachers' titles did not include "minister," and they had less formal religious training than did a teacher in a prior case in which the exception applied, their core responsibilities as teachers were essentially the same and the schools saw them as playing a vital role in carrying out the mission of the church. Accordingly, the Court reversed the Ninth Circuit, and held that the ministerial exception barred the teachers' claims.

The decision is an important one for both employees and employers, particularly those associated with religious institutions. *Our Lady of Guadalupe* effectively broadens the scope of the ministerial exception such that an employee of a religious institution whose duties are vital to carrying out the mission of the church may not be protected under Title VII. Of course, if religious institutions employ a purely secular employee, e.g., a bookkeeper, custodian, cafeteria worker, or similar non-religious employee, the ministerial exception would not apply. Lower courts will have to grapple further with the limits of the ministerial exception in light of this decision.

Little Sisters of The Poor Saints Peter and Paul Home v. Pennsylvania, et al.

The Patient Protection and Affordable Care Act of 2010 ("ACA"), commonly referred to as Obamacare, has been a source of litigation since its inception. The ACA requires employer health plans offering Minimal Essential Benefits to provide women with "preventive care and screenings" without "any cost sharing requirements." Although contraceptive coverage is not specified in the ACA statute, the federal government mandated such coverage



shortly after the ACA's inception by promulgating rules that included contraception in the "preventive care and screenings" to be offered without cost-sharing. This requirement is commonly known as the contraceptive mandate. Thereafter, the Trump administration issued new rules expanding the exemption from the ACA that allows private employers with religious or moral objections to opt out of providing coverage without any notice. The legalities of the Trump administration's new rules were challenged on substantive and procedural grounds, and ultimately the case made its way to the Supreme Court.

In writing for the 7-2 majority, Justice Clarence Thomas held that, under a plain reading of the statute, the ACA gave the federal government broad discretion to craft the exemptions to the contraception mandate, and that the rules promulgating the exemptions were free from procedural defects. As such, the Court held employers can exclude birth control from their health plans if they oppose contraception on "moral" or "religious" grounds, expanding the original scope of the exemptions afforded under the ACA. Although this decision is important, the ACA's exemptions and mandate will likely be a source of litigation for years to come, particularly since the Court remanded the cases to the lower courts for further proceedings. ▲

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