2020-21 Section Calendar Inside!

The Florida Bar
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Viktoryia Johnson
Editor

SCOTUS Expands "Ministerial Exception" in 7-2 Decision Involving Catholic Schools

Introduction

On July 8, 2020, the United States Supreme Court (SCOTUS) issued its decision in the consolidated cases of *Our Lady of Guadalupe School v. Morrisey-Berru* and *Biel v. St. James School*.[1] In both cases, SCOTUS examined the "ministerial exception" as a bar to employment discrimination claims.[2] The exception, rooted in the First Amendment's Establishment and Free Exercise Clauses, bars the State from interfering in "matters of church government as well as those of faith and doctrine."[3] Notably, the exception is broad in application and protects religious employers against claims by ministerial employees asserting a wide range of employment discrimination claims—not just religious discrimination under Title VII.[4]

Factual Background

Our Lady of Guadalupe School v. Morrisey-Berru

Plaintiff Agnes Morrisey-Berru (Morrisey-Berru) was a long-term fifth and sixth grade teacher at Our Lady of Guadalupe School located within the Archdiocese of Los Angeles, California.[5] Morrisey-Berru was subject to a school employment agreement that set forth the school's mission of developing and promoting the Catholic faith in its students. The employment agreement also outlined Morrisey-Berru's duties in achieving this mission, including to "model and promote" Catholic "faith and morals."[6] The school's faculty handbook set forth similar principles and expectations for its teachers.[7] In addition to instructing her class on traditional academic subjects, Morrisey-Berru also taught her students a daily religion class pursuant to an established curriculum designed to educate young Catholics in the faith.[8] She also prepared her students to attend weekly Mass, as well as to participate in confession and communion.[9]

In 2014, the school approached Morrisey-Berru about transitioning from full-time to part-time; the following year, it did not renew her employment contract.[10] The school asserted that its decision was based on Morrisey-Berru's difficulties administering a new reading and writing program designed to keep certain accreditation standards and improve the school's academics.[11] Morrisey-Berru filed a charge of discrimination and, after exhausting her administrative remedies, filed suit under the Age Discrimination in Employment Act.[12]

Biel v. St. James School

Plaintiff Kristen Biel (Biel) was a fifth-grade teacher at St. James School, also located in the Archdiocese of Los Angeles.[13] She taught her students all academic subjects, including a religion class based on a prescribed Catholic curriculum.[14] She attended a school-wide Mass with her class each month, at which she was responsible for encouraging the students to actively participate in the liturgy.[15] Biel's employment agreement set forth the school's religious mission to promote the Catholic faith and required her to serve that mission.[16] Similar language was also part of the school's faculty handbook.[17]

In April 2014, Biel informed St. James that she had been diagnosed with breast cancer and would need leave for medical treatment, including chemotherapy.[18] Subsequently, the school advised Biel that it did not intend to renew her contract for the next year based on concerns regarding her classroom administration.[19] After exhausting her administrative remedies, Biel filed suit under the Americans with Disabilities Act, as amended.[20]

Procedural Histories

Both plaintiffs filed their respective lawsuits in the United States District Court for the Central District of California.[21] Following discovery in each case, the court granted the schools' motions for summary judgment.[22] The district court's decisions were based on the application of the ministerial exception recognized by the U.S. Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*[23] and its progeny, which set forth factors to be used in determining whether the exception applies. These factors include: the existence of a formal religious title, the existence of formal religious training, and whether the employee was held out to the public as a "minister."[24] Finding that within this framework the schools established that each plaintiff satisfied the exception, the district court dismissed the cases.[25]

Both plaintiffs appealed the dismissals to the U.S. Court of Appeals for the Ninth Circuit.[26]

The Ninth Circuit reversed the lower court's decisions. In *Morrisey-Berru*, the Ninth Circuit concluded that under *Hosanna-Tabor*, the plaintiff's lack of formal title, limited formal religious education, and the fact that she "did not hold herself out to the public as a religious leader or minister," outweighed her religious responsibilities. Thus, the court found that *Morrisey-Berru* did not fall within the exception.[27] Similarly, in *Biel*, the court reasoned, in part, that the plaintiff lacked the requisite "credentials, training, [and] ministerial background" to qualify for the exception.[28] Accordingly, the Ninth Circuit held that the plaintiffs could, in fact, proceed with their claims.[29] The schools each appealed the decisions to the U.S. Supreme Court.[30]

Decision

In a 7-2 decision by Justice Alito, the Court reversed the Ninth Circuit, finding that both Morrisey-Berru and Biel indeed qualified as "ministers" under the exception and thus were barred from proceeding with their claims.[31] The Court began its analysis by setting forth the basic legal principle limiting the ability of courts to assess employment discrimination claims by "ministers" against their religious employers.[32] The Court explained that "[t]he First Amendment provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof' and that "[a]mong other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion."[33]

The Court then noted that while the factors articulated in *Hosanna-Tabor* may be important in determining whether a position falls within the exception, "[w]hat matters, at bottom, is what an employee does."[34] In rejecting a rigid application of the factors discussed in *Hosanna-Tabor*, the Court reasoned:

> If titles were all-important, courts would have to decide which titles count and which do not, and it is hard to see how that could be done without looking behind the titles to what the positions actually entail. Moreover, attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.[35]

The Court also noted the vital nature of religious education to many faiths practiced in the United States.[36]

Applying this framework to the plaintiffs, the Court determined that there was "abundant record evidence that both teachers performed vital religious duties." For example, the record showed that:

- their employment agreements and the schools' handbooks made clear the teachers were expected to further each school's mission of educating and forming students in the Catholic faith;
- as teachers of religion (among other subjects), they "were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith";
- the teachers guided their students "by word and deed" by participating in prayers and Mass with students and by preparing the students for participation in religious activities.[37]

The Court noted that, unlike the plaintiff in *Hosanna-Tabor*, "[the teachers'] titles did not include the term 'minister,' and they had less formal religious training," yet "their core responsibilities as teachers of religion were essentially the same . . . [a]nd both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the schools' definition and explanation of their roles is important."[38] Thus, the Court determined that because

the ministerial exception applied and barred judicial intrusion into the schools' decision-making, plaintiffs could not proceed with their respective lawsuits.[39]

Dissent

Justice Sotomayor authored the dissent, which was joined by Justice Ginsburg.[40] The dissent began by noting that a number of federal employment discrimination laws contain language specifically crafted to protect religious autonomy.[41] For example, in the Americans with Disabilities Act, Congress specifically included a provision that permits religious organizations to consider religion when making employment-related decisions, by allowing such employers to require that "all applicants and employees conform" to the entity's "religious tenets."[42] The dissent also noted that "Title VII . . . permits a school to prefer '[h]iring and employ[ing]' people 'of a particular religion' if its curriculum 'propagat[es]' that religion."[43] In this regard, the dissent observed that "[t]hese statutory exceptions protect a religious entity's ability to make employment decisions—hiring or firing—for religious reasons" and that, in contrast, the ministerial exception is a "judge-made doctrine" that applies much more broadly and not just to religious-based discrimination claims.[44]

With respect to Biel and Morrisey-Berru, Justice Sotomayor wrote that the facts demonstrated that both teachers were indeed "lay teachers," with the record showing that:

- the schools did not publicly represent that each teacher was "a Catholic spiritual leader or 'minister'";
- "neither teacher had a 'significant degree of religious training' or underwent a 'formal process of commissioning'";
- each teacher taught various subjects, along with a religion class pursuant to a standard curriculum, and they "had almost exclusively secular duties"; and
- neither school required the teachers to be Catholic.[45]

The dissent concluded with the assertion that the majority's decision was "profoundly unfair" and that, "[i]n expanding the ministerial exception far beyond its historic narrowness, the Court overrides Congress' carefully tailored exceptions for religious employers. Little if nothing appears left of the statutory exemptions after today's constitutional broadside."[46]

Takeaway

The Court's decision is a significant victory for religious employers—particularly schools. The ruling upholds the ministerial exception in a manner that buttresses the ability of religious employers to assert the defense in employment discrimination and, potentially, other cases. While an employee's duties appear to be the key inquiry in assessing the applicability of the exception, religious employers should take steps to ensure that the job titles, position descriptions, and educational requirements of those whom it considers to be "ministers" are consistent with that view. Taking these steps will further a religious employer's assertion of the defense in the event of employment litigation involving such employees.

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Endnotes

1 *Our Lady of Guadalupe Sch. v. Morrisey-Berru; St. James Sch. v. Biel*, 140 S. Ct. 2049 (July 8, 2020).

2 Since the passage of Title VII and other employment discrimination laws, courts have recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers. *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 173 (2012). The rationale is that,

> [r]equiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Id.

3 *Id.* at 2055.

4 *See id.* at 2055, 2082.

5 *Id.* at 2056.

6 *Id.* at 2056–57.

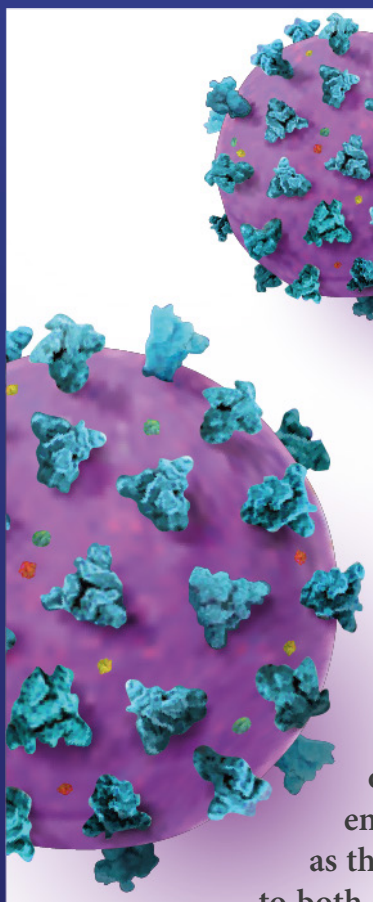
7 *Id.* at 2057.

8 *Id.*

9 *Id.*

10 *Id.* at 2057–58.

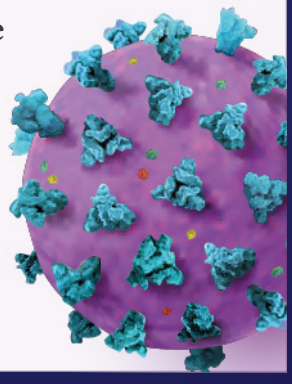
11 *Id.* at 2058.
12 *Id.*
13 *Id.*
14 *Id.* at 2059.
15 *Id.*
16 *Id.* at 2058
17 *Id.* at 2058–59.
18 *Id.* at 2059, 2078.
19 *Id.* at 2059.
20 *Id.*
21 *Morrisey-Berru v. Our Lady of Guadalupe Sch.*, 2017 WL 6527336, at *1–3 (C.D. Ca. 2017); *Biel v. St. James Sch.*, 2017 WL 5973293, at *1–3 (C.D. Ca. 2017).
22 *Id.*
23 *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171 (2012).
24 *Morrisey-Berru*, 2017 WL 6527336, at *1–3; *Biel*, 2017 WL 5973293, at *1–3.
25 *Id.*
26 *Our Lady of Guadalupe Sch. v. Morrisey-Berru; St. James Sch. v. Biel,* 140 S. Ct. 2049, 2059 (July 8, 2020).
27 *Id.* at 2058–59.
28 *Id.* at 2059.
29 *Id.* at 2058–59.
30 *Id.*
31 *See id.* at 2069.
32 *Id.* at 2055.
33 *Id.* at 2060 (citing *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 186 (2012)).
34 *Id.* at 2063–64.
35 *Id.* at 2063–65.
36 *Id.* at 2064–65.
37 *Id.* at 2066.
38 *Id.*
39 *See id.* at 2069.
40 *Id.* at 2071 (Sotomayor, J., dissenting).
41 *Id.* at 2072.
42 *Id.* (citing 42 U.S.C. § 12113(d)(2)).
43 *Id.* (citing 42 U.S.C. § 2000e–2(e); § 2000e–1(a)).
44 *Id.*
45 *Id.* at 2080–81.
46 *Id.* at 2082.



COVID 19:
What Employers and Employees Need to Know

September 16, 2020, 12:00 (Noon)–1:30 p.m.
(Free GoToWebinar in conjunction with YLD)

The Young Lawyers Division and the Labor & Employment Law Section of The Florida Bar are partnering to provide a FREE webinar on how the COVID-19 outbreak is impacting employment issues. Employers and employees face safety concerns and an uncertain legal landscape as they address the COVID-19 outbreak and attempt to return to both normal and new working conditions. By identifying and anticipating the issues that will arise, employers can better develop plans to minimize the legal risks associated with operating during a pandemic, and employees can know their rights with regard to safe working conditions. Employment law experts Brian Hayden, Tyler White, and Michelle Nadeau will speak on issues of interest to lawyers who are both employers and employees.



Labor and Employment Law Section

Protecting Rights, Pursuing Justice, Promoting Professionalism

2020-2021 Section Calendar

Mark these dates on your calendar, and keep your eyes open for registration information that will be provided by email and on the Section's website.

September 16, 2020, 12:00 (Noon)–1:30 p.m. (Free GoToWebinar in conjunction with YLD)

COVID 19: What Employers and Employees Need to Know

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September 23, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

U.S. Supreme Court Update: Title VII and LGBTQ Discrimination—What Florida Employers and Employees Need to Know

Presenters: Robert Sniffen and Jeffrey Slanker, *Sniffen & Spellman*

The United States Supreme Court's recent decision in *Bostock v. Clayton County* held that federal law prohibits discrimination against LGBTQ employees. Speakers will discuss the decision, how the decision might be implemented by lower courts, and how it impacts the landscape for employees and employers in Florida.

October 14, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Title: NLRB Update: Where Do We Stand Now? (Part 1)

Presenters: Robert Turk and Lisa Berg, *Stearns, Weaver, Miller*

During the Trump administration, The National Labor Relations Board has issued a number of precedential decisions and undertaken rulemaking that have reversed actions that the NLRB took during the Obama administration. In Part 1 of this update, speakers Bob Turk and Lisa Berg will address these changes and how they have reshaped the landscape of federal labor law.

October 22–23, 2020

46th Annual Public Employment Labor Relations Forum

Location: Rosen Plaza Hotel, Orlando

Co-Chairs: Glenn Thomas & Janeia Ingram

Now in its 46th year, the Public Employment Labor Relations Forum is the longest running annual seminar jointly sponsored by two sections of The Florida Bar. PELRF focuses on the labor and employment issues that affect public employers, public employees, and the unions that represent public employees. This year's PELRF will focus on a number of hot topics in public labor and employment law.

November 18, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Keeping Tabs on the COVID Crisis

Presenter: Linda Bond Edwards, *Rumberger Kirk*

The COVID-19 outbreak represents an ongoing challenge for employers and employees, particularly given the constantly changing landscape. Linda Bond Edwards will provide an update on the key issues that employment law practitioners should be aware of when advising clients on COVID.

December 9, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Hot Topics in Public Sector Bargaining

Presenters: Michael Mattimore, *Allen Norton & Blue,* and Marcus Braswell, *Sugarman & Susskind*

Current events continue to shape the challenges that government employees and employers face in the public sector labor arena. Labor law experts Michael Mattimore and Marcus Braswell will speak about the new issues that are impacting collective bargaining and what may be on the horizon.

January 14–15, 2021

21st Labor and Employment Law Annual Update and Certification Review

Location: Rosen Shingle Creek, Orlando
Co-Chairs: Jennifer Fowler-Hermes and Michelle Nadeau

February 10, 2021 (GoToWebinar) – TBD

March 17, 2021 (GoToWebinar)

NLRB Update Part II

Presenters Bob Turk & Lisa Berg

April 8–10, 2021

Advanced Labor Topics

Location: The Madison, 1177 15th Street Northwest, Washington, DC 20005
Co-Chairs: Don Slesnick & Greg Hearing

May 5, 2021 (GoToWebinar) – TBD

Fall 2021

Trial Academy

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