Opinion
News



A demonstrator in Washington holds a large cross outside the U.S. Supreme Court July 8. (CNS/Reuters/Jonathan Ernst)



by Jamie Manson

View Author Profile

jmanson@ncronline.org
Follow on Twitter at @jamielmanson

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For more than eight years, the U.S. bishops have been playing the long game to defend their claims to religious liberty. Two decisions handed down by the Supreme Court on July 8 show that their strategy is working.

The first of the court's rulings was *Our Lady of Guadalupe School* v. *Morrissey-Berru*, which was actually combination of two cases that also included *St. James School* v. *Biel*. Both schools are in the Los Angeles Archdiocese, but the ruling applies to the entire country. (I'll take on the other July 8 ruling, *Little Sisters of the Poor Peter and Paul Home* v. *Pennsylvania*, in my next column.)

In the first case, Agnes Morrissey-Berru sued Our Lady of Guadalupe under the Age Discrimination in Employment Act of 1967, after the school refused to renew her contract because, they claimed, she was struggling to keep order in her classroom and meet the expectations of a new reading program.

In the other case, Kristen Biel said she was fired from St. James School after informing administrators that she had breast cancer and needed to take time off for surgery and chemotherapy. Biel sued under the Americans with Disabilities Act of 1990 when, in 2015, the school chose not to renew her one-year contract based on classroom performance.

The court ruled 7-2 in favor of the schools with Justice Samuel Alito writing the opinion. The case builds upon the Supreme Court's 2012 decision in *Hosanna Tabor* v. *EEOC*, which ruled that any employee at a religious organization who could be classified as a "minister" is beyond the reach of civil rights laws. The problem was, the court was vague in its description of what constitutes a minister.

In last week's decision, Alito's opinion offers a definition that broadens the so-called "ministerial exception."

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"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," the justice wrote.

The notion of "forming students in the faith" has a wide application. Both *Biel* and *Morrissey-Berru* taught secular subjects, and neither of them had any theological or ministerial training. But because they joined their students in daily prayer, SCOTUS ruled that they met the criteria to fall under the ministerial exception.

In her dissent, Justice Sonia Sotomayor argued that the decision may provide a "rubber stamp" for employment discrimination by religious institutions against "the rights of countless coaches, camp counselors, nurses, social-service workers, in-house lawyers, media-relations personnel, and many others who work for religious institutions."

She is not overreacting. As Mark Joseph Stern pointed out last week in Slate, "After Wednesday's decision, every competent lawyer counseling a religious institution will advise their client to foist some minimal 'religious duties' on lay employees to shield themselves from lawsuits."

He pointed to the conservative, powerful law firm Alliance Defending Freedom's move, in 2015, to advise "religious employers to dump some trivial religious responsibilities on receptionists — like directing them to 'provide religious resources' — so they would qualify as 'ministers' and lose legal protections," Stern wrote.

The U.S. Supreme Court's decision gives religious groups sweeping immunity from non-discrimination laws. It prevents all "ministers" from receiving any protections under federal and state employment laws. All because of an extreme claim to religious liberty pushed particularly fervently by Catholic bishops.

When the U.S. bishops first announced their religious freedom crusade in 2012, much of their rallying cry centered on increased legal protections for same-sex marriage. The bishops fired their first shot in a letter called "Marriage and Religious Freedom: Fundamental Goods That Stand or Fall Together," which they co-signed with dozens of arch-conservative religious leaders from evangelical and Mormon churches as well as several Jewish and Muslim leaders.

In the letter, they claimed that religious organizations that run "schools, hospitals, nursing homes and other housing facilities, providing adoption and counseling services," would be forced treat same-sex couples as married couples and, therefore, would be forced to uphold laws protecting LGBTQ peoples' employment rights as well as "employment benefits, adoption, education, healthcare, elder care, housing, property, and taxation."

This zeal to prevent LGBTQ employees from enjoying equal civil rights has always been the prime mover behind the bishops' religious liberty cause. Unfortunately, in the wake of the Morrissey-Berru case, all employees who are protected classes because of age, race, gender and disability, will also now have limited legal grounds to sue on the basis of discrimination.

While much of the commentary has justifiably focused on the rights of teachers and other employees in religiously-affiliated schools, I cannot look away from the impact this ruling is also going to have not only on thousands of people employed in churches, but also on all of the young adults preparing for ministry in hundreds of seminaries, divinity schools and other formation programs.

Morrissey-Berru means that churches can terminate without legal repercussions a whole host of people: a female employee who is being sexually harassed; a person of color who doesn't get a raise or promotion because of discrimination in the workplace; a sick or disabled person who may need extra support to perform duties; an elderly parish secretary who is told she must work during the COVID pandemic or lose her job; a parish worker who posted a photo on social media of his participation in his sibling's same-sex wedding.

Ministry is already high risk enough for church workers who have to make themselves both emotionally and physically vulnerable in pastoral care programs, homeless ministries, domestic violence shelters, hospitals and hospices, prisons and halfway houses. But now when they accept a church job, they also have to accept that they can be fired at will for any reason without any legal recourse. Religious leaders constantly lament that young people aren't interested in the church, but this court ruling hardly makes ministry any more attractive or hospitable.

All of this leads me to wonder, who on earth is going to want to work in any religiously-affiliated institution, let alone a parish, under these conditions? As I see it, working in a religious institution now means living in fear for your job at all times

and knowing that no one will protect you if you are treated unjustly in the workplace. Is this what a church that claims to be founded on the Gospel values of compassion and justice looks like?

Some scholars like Richard Garnett, a law professor at the University of Notre Dame Law School, argue that cases like the *Morrissey-Berru* case are not "about a supposed right of churches to 'ignore' civil-rights laws," but rather "are about protecting the civil and constitutional rights of religious institutions to decide religious questions for themselves."

But when the ministerial category is now so broad that it can be manipulated to include almost any employee, it certainly appears like the Catholic Church has sacrificed the rights of workers on the altar of extreme religious liberty claims.

And in addition to abandoning protections for countless employees, there is also this irony. The Catholic Church refuses to admit most people to ordained ministry, and yet, they are now willing to see almost anyone as a "minister" — if they need to fire them.

[Jamie L. Manson is long-time, award-winning columnist at the National Catholic Reporter. Follow her on Twitter: @jamielmanson.]

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