News

The U.S. Supreme Court is seen in Washington Nov. 1, 2021. (CNS photo/Tyler Orsburn)

The U.S. Supreme Court is seen in Washington Nov. 1, 2021. (CNS photo/Tyler Orsburn)



Carol Zimmermann

View Author Profile

Catholic News Service

View Author Profile

Join the Conversation

Send your thoughts to *Letters to the Editor*. Learn more

Washington — November 3, 2021

Share on BlueskyShare on FacebookShare on TwitterEmail to a friendPrint

The Supreme Court sent a case back to a lower court Nov. 1 asking it to reconsider a ruling against the Diocese of Albany, New York, and other religious groups that challenged the state's mandate requiring employers to provide abortion coverage in their employee health insurance plans.

In a brief order, the court said it would not take the case in light of its ruling earlier this year in Fulton v. Philadelphia saying a Catholic social service agency should not have been excluded from Philadelphia's foster care program because it did not accept same-sex couples as foster parents. That case concluded the city's refusal to

work with the agency violated the free exercise clause of the First Amendment.

The Supreme Court justices had considered the New York case four previous times before issuing the order that vacated the state court's ruling and sent the case back to the lower court.

Justices Clarence Thomas, Samuel Alito and Neil Gorsuch indicated that they would have reviewed the case on its merits, but they were one vote short of the four needed to do so.

But sending the case back was seen as good news by Albany Bishop Edward B. Scharfenberger, who said: "We are gratified and grateful that the Supreme Court has recognized the serious constitutional concerns over New York state's heavy-handed abortion mandate on religious employers."

In a Nov. 1 statement, he said he was confident the order for the lower court to take another look at this case would reveal that "the unconstitutional regulatory action taken by New York state will ultimately be completely overturned as incompatible with our country's First Amendment guarantee of religious liberty."

The state regulation was placed on insurers in 2017 by New York state's Department of Financial Services.

Advertisement

It carved out an exemption for religious employers primarily serving those of their own faith, but the exemption did not extend to other religious groups in the state that have any type of outreach ministry such as Catholic Charities; the Carmelite Sisters for the Aged and Infirm, who run a nursing home in Albany; the Community of St. Mary, an Anglican order of nuns dedicated to contemplative monastic life and youth outreach; and the First Bible Baptist Church of Hilton.

Noel Francisco, the former U.S. solicitor general, represented the Albany Diocese before a federal court where he said the state's regulation violated the Constitution. An intermediate state appellate court upheld the state's requirement calling it "neutral and generally applicable."

In a brief submitted to the Supreme Court asking the court to hear their case, religious groups said the regulation to provide abortion coverage in their health plans placed an undue burden on them. They also said it was unconstitutional to require them to "participate in a practice so fundamentally in conflict with their religious beliefs."

In its brief, the state of New York said its mandate requires religious organizations to cover abortions if they have a broad outreach or "if they employ or serve people regardless of their faith."

In January 2019, a state Supreme Court justice dismissed the Albany Diocese's challenge to the abortion coverage mandate, which the diocese appealed, and the following year the New York State Court of Appeals upheld the ruling.