

The Supreme Court - July 8, 2020

Today, the Supreme Court of the United States issued the following opinions:

Our Lady of Guadalupe School v. Morrissey-Berru, No. 19-267: The Court has recognized that the First Amendment protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952). This principle has led to the Court adopting a “ministerial exception” to laws governing the employment relationship between a religious institution and certain key employees. Applying the ministerial exception, the Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), held that the First Amendment barred a court from entertaining an employment discrimination claim brought by an elementary school teacher against the religious school where she taught, identifying relevant factors such as the teacher’s title as a “Minister of Religion, Commissioned,” her educational training, and her responsibility to teach religion and participate with students in religious activities. In this case, two elementary school teachers – who do not have the title of “minister” and have less religious training than the teacher in the Court’s prior decision – brought employment discrimination claims against the Catholic schools at which they taught. Both teachers, Agnes Morrissey-Berru and Kristen Biel, had work responsibilities that included teaching religion, worshipping with students, praying, and performance measured on religious bases, all consistent with their employment agreements and applicable faculty handbook. Morrissey-Berru brought an age discrimination claim against her school, alleging that it had demoted her and then failed to renew her contract in order to replace her with a younger teacher. Biel claimed she was discharged from her school because she had requested a leave of absence to obtain breast cancer treatment. The District Court in both cases dismissed the claims under the ministerial exception, and the Ninth Circuit in both cases reversed, citing the teachers’ lack of a minister title or level of religious training similar to that of the teacher in *Hosanna-Tabor*. Today, the Court reversed, holding that the cases fall within the same rule that dictated the Court’s decision in *Hosanna-Tabor*, and reiterating that when a school with a religious mission

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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. Justice Alito issued the Court's opinion, joined by Chief Justice Roberts, and Justices Thomas, Breyer, Kagan, Gorsuch, and Kavanaugh. Justice Thomas also filed a concurring opinion, joined by Justice Gorsuch. Justice Sotomayor dissented, joined by Justice Ginsburg.

The Court's decision is available [here](#).

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, No. 19-431; **Trump v. Pennsylvania**, No. 19-454: This case represents the latest round in the protracted litigation surrounding the regulatory requirement known as the contraceptive mandate promulgated pursuant to the Patient Protection and Affordable Care Act of 2010 ("ACA"), 124 Stat. 119. The Departments of Health and Human Services, Labor, and the Treasury ("Departments") jointly administer the relevant ACA provision, 42 U.S.C. §300gg-13(a)(4), under which the contraceptive mandate is promulgated. The Departments in 2017 issued two interim final rules ("IFRs") and sought post-promulgation comments on both. One significantly broadened the definition of an exempt religious employer, and the other created a similar "moral exemption" for employers. Final rules were in turn issued leaving the exemptions as they appeared in the IFRs largely intact, while also responding to post-promulgation comments. The Commonwealth of Pennsylvania and others brought suit, claiming that the two rules were substantively and procedurally invalid. The District Court issued a nationwide preliminary injunction against the rules' enforcement, and the Third Circuit affirmed. The Court today reversed, holding that the Departments had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections, and that the rules' issuance was procedurally valid. In particular, the Court found that §300gg-13(a)(4) provided statutory authority for the rules, because it permitted the Health Resources and Services Administration ("HRSA") – which the Departments administer – broad discretion to both define preventative care and screenings and to create the religious and moral exemptions. The Court also found that the rules contained all the elements of a notice of proposed rulemaking as required by the APA, and rejected the Third Circuit's evaluation of the final rules under an "open-mindedness" test that the Court found violated the proposition that courts are not free to impose specific procedural requirements upon agencies that have no basis in the APA. Justice Thomas issued the Court's opinion, joined by Chief Justice Roberts, and Justices Alito, Gorsuch, and Kavanaugh. Justice Alito also filed a concurrence, joined by Justice Gorsuch. Justice Kagan concurred in the judgment, joined by Justice Breyer. Justice Ginsburg dissented, joined by Justice Sotomayor.

The Court's decision is available [here](#).