



**Religious Autonomy:
The Higher Education Implications
of Our Lady of Guadalupe**

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Our Lady of Guadalupe School v. Morrisey-Berru

- 7-2 Decision by the Supreme Court of the United States
- Held ministerial exception, grounded in First Amendment's Religion Clauses, barred the teachers' employment discrimination claims.
- Major Expansion of Religious Liberty
- Significant Implications for both Private and Public Higher Education



Overview of Presentation

1. Background to the Cases
2. Expansion of Religious Liberty
3. Implications for Private Religious Institutions
4. Implications for Public Institutions



1. Background of the Cases

- Facts
- Lower Court Proceedings
- Supreme Court Reasoning



Facts

- Both involve teachers at Catholic Elementary Schools
- According to the Schools, both were fired for performance reasons
- Both claim their terminations were discriminatory



Lower Courts

- District Court in OLG says Ministerial Exception
- Ninth Circuit reverses, says she is not a minister under court precedent
- District Court in SJ says Ministerial Exception
- Ninth Circuit reverses, says she is not a minister under court precedent



Supreme Court Reasoning

- Review of Hosanna Tabor
- Development of New Standard



Review of Hosanna Tabor

- Hosanna Tabor focused on the characteristics of the teacher's job (clearly a minister)
- Justice Thomas concurred and said you must always defer
- Justice Kagan concurred and said court should focus on functions



Development of New Standard

- Variety of factors are relevant
- Do not have to have the title of minister
- Academic requirements may or may not be relevant
- Educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities



Effective Deference

- For all practical purposes, the decision effectively adopts Justice Thomas' deference position
- Courts are not going to second guess a religious institution's determination



2. Expansion of Religious Liberty

- Determine Faith and Doctrine
- Internal Governance
- Employment Decisions



Determine Faith and Doctrine

- Religious Organization Determines Faith and Doctrine (what we believe)
- Free Exercise Clause Justification
- Establishment Clause Justification



Internal Governance

- Religious Organizations get to decide questions of internal governance
 - Who is a member
 - Who gets to play a particular role
 - How to enforce the law
- Secular Courts must accept the Religious Organization's judgments and rulings (i.e. organization excommunicates someone)



Employment Decisions

- Not exempt from generally applicable employment laws
- Non-interference in decisions about who gets to play particular roles



3. Implications for Private Religious Institutions

- What the institution wants to teach
- How it is going to be taught
- Exemption from employment laws
- Bostock



What the Institution Wants to Teach

- Institution may decide that all aspects of life are bound up in religion
- Institution may draw the boundary anywhere it wants



How it is going to be taught

- Institution can decide who has responsibility for religious instruction
 - Faculty (all or some)
 - Student Affairs Administrators
 - Coaches
 - Senior Administrators



Exemption from Employment Laws

- If the Religious Institution says the individual is “educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities,” then that position is exempt from employment laws



Bostock

- For purposes of Title VII, “Sex” includes both “sexual orientation” and “gender identity.”
- Significant victory for the LGBTQ community
- Inapplicable to those positions that would qualify under the “ministerial exception”



4. Implications for Public Institutions

- Religious Clauses Limit Public Institutions



Religion Clauses Limit

- Establishment Clause—Public Institutions cannot promote a particular faith or favor one faith over another
- Establishment Clause—In the Name of Free Exercise favor Religion over Non-Religion



Student Religious Organization

- Right of Recognition
- Right of Access
- Right of Funding



Limitations on Religious Organizations

- Christian Legal Society—public institution may force religious organization to admit those who disagree



Impact of OLG

- Impossible to square OLG with Christian Legal Society
- Supreme Court decisions cannot be overruled by implication
- Religious Group would have a strong argument that state university cannot interfere with the group's internal policies



The Vision

- Court is expanding secular protections against discrimination (Bostock)
- Court is also expanding religious liberty
- Inazu's Confident Pluralism



Questions?

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