

## EMPLOYMENT LAW AND RELIGIOUS LIBERTY DEVELOPMENTS

Outcomes Conference 2023

Courts continue issuing important rulings related to religious liberty, especially as it relates to employment law and hiring. This workshop will focus on key developments from the preceding year, with an eye toward what may be coming in the future.

Presenters:

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Presentation Outline:

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### 1. Supreme Court update:

a. *Dobbs v. Jackson Women's Health* (2022)

Issue: Does the U.S. Constitution confer a right to abortion, or is the matter reserved for the states?

b. *Kennedy v. Bremerton School District* (2022)

Issue: Does the First Amendment require a public school district to allow a football coach to pray on the field after games?

c. *Carson v. Makin* (2022)

Issue: Can Maine disqualify certain schools from a state funding program simply because of the schools' religious activities?

d. *303 Creative v. Makin* (pending)

Issue: Does the Free Speech clause protect a Christian website designer's right to decline to create websites for same-sex weddings?

e. *Yeshiva University v. YU Pride Alliance* (stay denied)

Issue: Does the First Amendment protect YU's choice to deny official recognition to an LGBTQ student club?

## 2. Other key religious liberty cases and developments:

- a. *Fellowship of Christian Athletes v. San Jose Unified School Dist.* (9th Circuit)  
Issue: Must a public school district reinstate official recognition of an FCA chapter? ('en banc' rehearing)
- b. *Guillot v. Whitehead* [Seattle Pacific University] (Washington Superior Ct.)  
Issue: Can board members be held liable for breaching their fiduciary duties because they sought to maintain a religious institution's historic stance on marriage and human sexuality?
- c. *Carrier v. Ravi Zacharias Int'l Ministries* (Northern District of Georgia)  
Issue: Does the First Amendment preclude donors from suing a ministry for fraud and unjust enrichment?
- d. *Braidwood Management, Inc. v. Becerra* (Northern District of Texas)  
Issue: Does the Religious Freedom Restoration Act (RFRA) provide an exemption for religious employers opposed to funding coverage for HIV PrEP?
- e. *Foothill Church v. Watanabe* (Eastern District of California)  
Issue: Does the First Amendment exempt churches from California's requirement that health plans cover abortion services?

## 3. Religious hiring rights developments:

- a. Courts continue to wrestle with the scope of the ministerial exception.
  - i. Art professor at Christian university who was expected to—but didn't always—integrate faith and academics... "Minister"?
  - ii. "Trainer" at Missionary Training Center who taught young people how to respond to online and social media inquiries... "Minister"?
- b. Questions about the meaning of the religious exemption in Title VII are working their way toward the Supreme Court.
  - i. The "702" exemption allows religious employers to prefer "individuals of a particular religion." Does this mean a religious employer may refuse to hire

individuals whose beliefs and/or conduct contradict the organization's on marriage and sexuality?

- ii. *Billard v. Charlotte Catholic High School* (4th Circuit)

#### 4. Recommendations

- a. Conduct a religious liberty “audit” of organizational documents, policies, practices, etc.
  
- b. Consider adopting a “Christian Community Policy”
  
- c. Remember the three-legged stool:
  - i. Sincerely-held beliefs
  - ii. Clearly articulated
  - iii. Consistently applied
  
- d. Evaluate the possibility of IRS recognition as a “church” or “association of churches.”
  
- e. Develop a plan for responding to sensitive situations, negative media attention, and legal action against the organization.