



## SCOTUS Favors Employers' Religious Liberties Over Employee Rights

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The Supreme Court of the United States (SCOTUS) issued two important decisions this week in cases reflecting the ongoing legal tensions between employers' religious liberties and the right of employees to be free from discrimination; and in both cases, SCOTUS tipped the scales decidedly in favor of employers' religious liberties.

### First Amendment Supersedes Employment Discrimination Claims

The Supreme Court issued a decision in two similar cases – essentially dismissing the discrimination claims brought by two Catholic school teachers who were discharged from their instructional positions at two different Catholic schools in southern California. In *Our Lady of Guadalupe School v. Morrissey-Berru* (19-267), and *St. James School v. Biel* (19-348), [the Supreme Court](#) held by a 7-2 majority that the U.S. Constitution's First Amendment Religion Clauses foreclose the teachers' employment discrimination claims. In the OLG case, the former teacher sued for age discrimination; in the St. James case, the teacher was dismissed after she sought a leave of absence for cancer treatment. The teacher later passed away.

Relying on the "ministerial exception" outlined in the 2012 SCOTUS decision

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in *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171 (2012), the majority opinion, authored by Justice Samuel Alito, noted that “religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.”

Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg in dissent, criticizes the majority for its distillation of the *Hosanna-Tabor* standard into “a single consideration: whether a church thinks its employees play an important religious role,” and observes that it “strips thousands of schoolteachers of their legal protections.”

## **Religious Exemptions From Birth Control Mandate Under the Affordable Care Act**

In a similar but procedurally more complicated ruling, the Supreme Court upheld the federal government’s expansion of a federal rule that exempts employers with religious or moral objections from being required to provide employees with health insurance coverage for birth control under the Affordable Care Act (ACA).

In a 7-2 decision in *Little Sisters of the Poor v. Pennsylvania* (19-431), SCOTUS tackled the latest skirmish of the ACA’s birth-control mandate. The ACA mandate generally requires employers to provide female employees health insurance with access to contraception. Religious entities have repeatedly challenged the rules, as well as the opt-out accommodation process developed under the Obama administration for employers with religious or moral exemptions. (The Trump administration had expanded those exemptions.)

With the majority opinion authored by Justice Clarence Thomas, SCOTUS held that the departments of Health and Human Services, Labor, and the Treasury had authority to issue rules for employers. In a concurring opinion, Justice Elena Kagan (joined by Justice Stephen Breyer) acknowledges the statutory authority of the federal agencies, but cautions, “that does not mean the Departments should prevail when these cases return to the lower courts. The States challenged the exemptions not only as outside the HRSA’s [Health Resources and Services Administration’s] statutory authority, but also as ‘arbitrary [and] capricious.’”

In her dissenting opinion, Justice Ginsburg (joined by Justice Sotomayor) notes, “Today, for the first time, the Court casts totally aside countervailing rights and interests in its zeal to secure religious rights to the *n*th degree.”

## **Takeaways for Discerning Employers**

While these Supreme Court decisions, in tandem, may bolster employers’ confidence in their sincerely held beliefs and moral objections about certain employment-related decisions, it is also important to recognize its limitations. Employers should strategize with their leadership and legal counsel to carefully weigh whether and to what extent these decisions should (or will) inform their own policies and practices, as well as any resulting reputational impact and workplace morale considerations.