

WebMemo



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Religious Freedom Is Not Just for Churches

Ryan Messmore

On October 5, the Supreme Court will hear oral arguments in a very important case concerning religious freedom. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* has to do with which employees of a church-run school count as ministers and, thus, whose employment status lies within the sphere of that church's autonomy. Earlier this week, the Supreme Court decided to let stand a lower court's ruling concerning another religious-based hiring case. In *Spencer v. World Vision*, the question is whether independently operated religious charities count as religious organizations and thus have the freedom to select employees based on religion. In these and similar cases, much depends on how religious institutions and employees are defined legally.

In addition to the legal issues at stake, the case raises questions about the nature of religion itself as it is understood in civil society. How citizens conceive of religion—what it is, where it is practiced, and by whom—shapes their notion of religious freedom. A narrow, privatized concept of religion can lead to the problematic assumption that religious freedom is only for churches.

A Narrow View of Religion and Religious Liberty... What is religious liberty, and who is it for? The answer to those questions depends in part on our notion of religion itself.

Does religion have to do merely with doctrines and beliefs, or does it also concern the application of those beliefs? Is it something only to be preached about and celebrated in seminaries and worship services, or is it something to be practiced in daily

life and work? Is religion solely private, or does it also take public form?

Our assumptions about the nature of religion—whether it is purely a private matter or is to be practiced in daily life—affect which people and institutions are considered “religious.” This, in turn, shapes views about what religious freedom protects and who should enjoy that protection.

Should religious freedom extend only to a small subset of the population—for example, to churches and monasteries, priests and nuns? Or should it apply to a broader range of groups and citizens, including schools, hospitals, and nonprofits as well as teachers, secretaries, doctors, therapists, and directors of charities?

Unfortunately, many activist groups in America press to confine religious freedom to a narrow zone. Some seem willing to protect religious liberty for churches and synagogues but not for faith-based schools or para-church ministries. Some seek to restrict religious liberty for any group receiving a government contract. Groups like Americans United for the Separation of Church and State and Lambda Legal, for example, have petitioned against religious hiring by religious groups that participate in federally funded programs.

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214 Massachusetts Avenue, NE
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(202) 546-4400 • heritage.org

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Efforts like these to restrict the scope of religious freedom go hand-in-hand with narrow, privatized notions of religion. Someone who sees religion solely as a spiritual matter is likely to view it as unrelated to other spheres of life. If religion is merely about people's "insides and insights," many suppose it should be cordoned off from public questions about economics and politics or health care and marriage.

Stephen Carter, a law professor at Yale University, describes the effects of this "privatization" of religion:

"[W]e often ask our citizens to split their public and private selves, telling them in effect that it is fine to be religious in private, but there is something askew when those private beliefs become the basis for public action."¹ At the root of this process, Carter asserts, is the widely held intuition that "religion is like building model airplanes, just another hobby: something quiet, something private, something trivial."²

According to this privatized view, only a small realm of acknowledged "religious" institutions and activities is deemed worthy of religious freedom protections. Praying and preaching seem to count, so pastors, churches, and monasteries typically enjoy freedom to do their work in accord with their beliefs. Other kinds of activity—like treating a sick patient, running a school, or growing a nonprofit—do not often fall within narrow understandings of "religious" activity.

...Expressed in a Narrow Religious Exemption. Consider the religious exemption contained in the recent rule regarding federally mandated coverage for women's health insurance policies. The rule

states that all new health insurance plans must provide complete coverage, with no co-pay, of a wide range of "preventative services," including contraceptive services.

Given that Catholic organizations and others morally object to these services, the Obama Administration created an exemption for religious employers. To qualify as a protected "religious employer," though, an organization must have as its primary purpose "the inculcation of religious values" and serve predominantly only those "who share its religious tenets."

This exemption fails to protect individuals and religiously affiliated insurance providers with religious objections to certain services. It also excludes the vast majority of faith-based service organizations that neither focus the majority of their efforts on teaching or preaching nor restrict their services to those sharing their faith.

As the United States Conference of Catholic Bishops has noted, under these criteria:

[E]ven the ministry of Jesus and the early Christian Church would not qualify as "religious," because they did not confine their ministry to their co-religionists or engage only in a preaching ministry. In effect, the exemption is directly at odds with the parable of the Good Samaritan, in which Jesus teaches concern and assistance for those in need, regardless of faith differences.³

It appears arbitrary for government to safeguard religious freedom for groups that *preach* about Christian charity but not for groups that *operate* Christian charities. It is also inconsistent for government officials to call on faith-based groups to help those in

1. Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Doubleday, 1993), p. 8.
2. *Ibid.*, p. 22.
3. Comments submitted by Office of the General Counsel, United States Conference of Catholic Bishops, to the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, August 31, 2011, p. 19, at <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf> (October 4, 2011).
4. See comments by President Barack Obama in "Obama Announces White House Office of Faith-based and Neighborhood Partnerships," Office of the Press Secretary, The White House, February 5, 2009, at http://www.whitehouse.gov/the_press_office/ObamaAnnouncesWhiteHouseOfficeofFaith-basedandNeighborhoodPartnerships (October 4, 2011).

need—as President Obama often calls upon them to do⁴—and then to undercut their freedom to adhere to the beliefs that inspire their service.

A More Robust View. The narrow view of religion reflected in weak religious exemptions is at odds with the way many Americans think and live.

According to Paul Marshall, senior fellow at the Hudson Institute’s Center for Religious Freedom, many people of faith hold that “religion is not a separate, isolated segment of human existence. It is not merely what people do with their solitude. It is not only acts of worship on a Sunday, or a Sabbath, or a Friday. It is not simply adherence to creeds or doctrines. Religion is one of the fundamental shapers of human life.”⁵

Rather than a private hobby for home or the weekends, the major religious traditions in America teach that faith should be integrated into every sphere of activity, including work. This view holds that faithfulness entails more than just displaying religious symbols on one’s desk or praying with colleagues during lunch. Faithfulness also concerns the actual work people do and the decisions they make regarding the operations and environment of their institutions.

Furthermore, the Judeo-Christian tradition affirms that the call to serve God through one’s work extends beyond occupations like teaching doctrines or leading worship services. For many years, reli-

gious adherents in the West—and especially leaders of the Reformation—have held that all sorts of work can—and should—be done to the glory of God.

An Important Anchor. Our understanding of the definition of religion carries significant implications for public policy. All citizens need to recognize the potential of policies to reinforce a more privatized faith that narrows the scope of religious freedom. Weak religious exemptions work against the robust understanding of the integration of religion and life held by many Americans.

Government should protect religious freedom for all citizens—not just those wearing habits and clerical collars—and various kinds of organizations. Religious freedom is not just for churches. For many individuals and organizations, losing the ability to abide by their religious convictions in carrying out their work imperils their religious identity. It also threatens the effectiveness of their work and the services they provide for those in need.

A more comprehensive, robust conception of religion is an important anchor for vigorous, wide-ranging religious freedom—freedom not merely to believe or teach certain doctrines, but to live out one’s faith in all aspects of life.

—Ryan Messmore, D.Phil., is William E. Simon Fellow in Religion and a Free Society in the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.

5. Paul Marshall, *God and the Constitution* (Lanham, MD: Rowman & Littlefield Publishers, 2002), p. 113.