

# Supreme Court grants religious liberty victories to Little Sisters, schools

The Supreme Court in two important decisions on religion near the end of its 2019-2020 term affirmed the right of religious groups to manage the internal affairs of their institutions free from government interference.

In one case (*Little Sisters of the Poor v. Pennsylvania*) the court held that the Little Sisters should not be required to cooperate in providing contraceptive coverage to employees in their homes for the elderly under the federal Affordable Care Act.

In the other case (*Our Lady of Guadalupe School v. Morrissey-Berru*) the court held that teachers in Catholic parochial schools count as ministers of the Church and therefore are not covered by federal job discrimination law. This was the result sought in the case by religious groups, including the U.S. Conference of Catholic Bishops, which saw it as affording them important protection against government interference in their decisions concerning ministerial personnel.

The Supreme Court decided both cases 7-2. Justice Clarence Thomas wrote the majority opinion in the Little Sisters of the Poor case, while Justice Samuel Alito wrote for the majority in the parochial school teachers case. Justices Ruth Bader Ginsburg and Sonia Sotomayor dissented in both.

## Teachers as ministers

The ruling on parochial school teachers and their status as ministers sheds important new light on the “ministerial exception” granted to churches in a 2012 Supreme Court decision (*Hosanna-Tabor Evangelical Church and School v.*

*EEOC*). In that earlier case, the court held that religious groups “must be free to choose” who will teach the faith in their name without second-guessing by government via job discrimination laws.

In that earlier case, Chief Justice John Roberts wrote: “The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith and carry out their mission.”

The new dispute arose after two parochial schools in Los Angeles separately refused to renew the contracts of two teachers for what the schools said was poor classroom performance. One of the teachers, who later died of breast cancer, said it was because of her illness. The other teacher claimed she was a victim of age discrimination. The 9th U.S. Circuit Court of Appeals ruled in favor of the teachers.

But Justice Alito in his majority opinion reversing the appeals court said the First Amendment’s religion clauses bar courts from getting embroiled in disputes involving ministerial personnel. And, he added, it was “apparent” that the parochial school teachers qualified as ministers of the Church in light of the *Hosanna-Tabor* decision that a teacher in a Lutheran school was a minister.

In a statement released shortly after Wednesday’s decision was announced, Archbishop Thomas G. Wenski of Miami, chairman of the U.S. Conference of Catholic Bishops’ Committee for Religious Liberty, and Bishop Michael C. Barber of Oakland, chairman of the Committee on Catholic Education, said: “As institutions carrying out a ministry of the Church, Catholic schools have a right, recognized by the Constitution, to select people who will perform ministry. The government has no authority to second-guess those ministerial decisions. We welcome the Supreme Court’s decision, which rightly

acknowledged this limit on state authority. This decision means that the Church can continue to serve her neighbors with integrity.”

## **Contraception mandate**

The decision in the Little Sisters of the Poor case marked the second time the Supreme Court has addressed much the same issue. In 2016 it told the Little Sisters and the government to work out an agreement that respected the sisters’ conscientious opposition to contraception – including contraceptives believed to cause early abortions – and the government’s interest in ensuring contraceptive coverage via ACA.

In the wake of that decision, President Donald Trump directed the Department of Health and Human Services to come up with a rule to shield religious groups against ACA’s contraceptive mandate. But Pennsylvania, California and New Jersey opposed the rule issued by HHS, and the 3rd U.S. Circuit Court of Appeals ruled a year ago against the administration and against the Little Sisters, who had entered the dispute in support of the HHS plan.

Justice Thomas in his majority opinion said Health and Human Services had the authority to issue the rule exempting the religious order from the contraceptive mandate. He also strongly suggested that the Religious Freedom Restoration Act of 1993 provided the Little Sisters with the protection they sought.

A joint amicus curiae brief was filed in the case by the Conference of Catholic Bishops, the Mormon Church, the Southern Baptist Convention’s Ethics & Religious Liberty Commission, the Lutheran Church-Missouri Synod, and Samaritan’s Purse, an evangelical relief organization headed by Franklin Graham.

Their brief dismissed as “trivial” and “speculative” the claim that excusing religious employers like the Little Sisters from having to provide contraceptive coverage for employees would place an unacceptable burden on the employees.

The religious groups also cited the Religious Freedom Act in making the argument that forcing a group like the Little Sisters to cooperate in providing contraceptive coverage would deprive them of “legal protections that the statute guarantees.”

Archbishop Wenski and Archbishop Joseph F. Naumann of Kansas City, Kansas, chairman of the USCCB Committee on Pro-Life Activities, released a statement, saying: “The Little Sisters of the Poor is an international congregation that is committed to building a culture of life. They care for the elderly poor. They uphold human dignity. They follow the teachings of Jesus Christ and his Church. The government has no right to force a religious order to cooperate with evil. We welcome the Supreme Court’s decision. We hope it brings a close to this episode of government discrimination against people of faith.”

*Russell Shaw is a contributing editor for Our Sunday Visitor.*