



The PAW Reporter

Pentecostal
Assemblies
of the World, Inc.

FALL 2020

Your Source
for Church
News and
Information

From the Presiding Bishop

The PAW Reporter is an electronic newsletter intended to inform church leaders of the Pentecostal Assemblies of the World, Inc. It is filled with informational articles, timely resources, and practical how-to applications. It is also very diverse in content and provides information from executive leadership articles and fundraising advice to human resources information, finance and church management tips.

*The PAW Reporter is a useful publication that hopefully both clergy and church leaders will look forward to receiving and reading cover to cover. Our readers should feel free to share, in full without modification, any issue(s) of **The PAW Reporter** with fellow clergy and friends.*

*In this edition of the eNewsletter, we highlight an issue of significance and value to clergypersons: **“What Is The Religious Land Use and Institutionalized Persons Act?”***

*It is our hope and prayer that our readers will view **The PAW Reporter** as a consistent and valuable resource, and will provide us with some valuable input and feedback from time to time.*

Respectfully,

*Bishop Theodore L. Brooks, Sr.
Presiding Bishop*

*The PAW Reporter
3939 Meadows Drive
Indianapolis, IN 46205*

EDITORS

Maxie D. Dobson, CPA (Retired)
Executive Editor

Wyatt McDowell, JD, LLM
Senior Editor

This eNewsletter is provided for general information purposes only and is not a substitute for professional accounting, legal or tax advice. The transmission of this eNewsletter does not create an attorney/client relationship. No recipients of this eNewsletter should act or refrain from acting on the basis of this eNewsletter without seeking professional legal counsel and/or other necessary professional assistance and advice. *The PAW Reporter* and its editors, individually and collectively, expressly disclaim all liability of every kind relating to actions taken or not taken based on the content of this eNewsletter.

©2020 **The PAW Reporter**.
Readers may freely copy and distribute "**The PAW Reporter**" in full without modification.

*The PAW Reporter
is scheduled
to be produced
four times a year.*

Contents

What Is The Religious Land Use and Institutionalized Persons Act?	3
Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S.__(2020).....	6
Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 591 U.S.__(2020)	8
Espinoza v. Montana Department of Revenue, 591 U.S.__(2020).....	9
New Simplified Per Diem Rates	10
Americans' Confidence in Churches Increases for First Time in Seven Years ...	11
Majority of White Christians See No Pattern in Killings.....	11
1 in 5 Churches Facing Permanent Closure Within 18 Months Due to COVID-19 Shutdowns	11
No Race Problem Here: Many Practicing Christians Remain Ambivalent.....	11
Pew Survey Shows Teens, Parents Practice Faith Together, Though Teens Are Less Religious	12
Half of U.S. Christians Say Casual Sex Between Consenting Adults Is Sometimes or Always Acceptable.....	12
People Are Reading the Bible Less During the Pandemic	12
Black Americans Nearly 3 Times More Likely to Be Killed By Police Than White Americans	13
More Than Half of Businesses That Closed During the Pandemic Won't Reopen.....	13
The Rich Own 87% of All Stocks	13
Misconduct by Government Officials Is A Factor in 54% of Wrongful Convictions	14
Racism Has Cost U.S. Economy \$16 Trillion in 20 Years.....	14

Featured Article



What Is The Religious Land Use and Institutionalized Persons Act?

Introduction

Churches and religious assemblies, especially smaller or unfamiliar ones, may be illegally discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. Zoning codes and landmarking laws may illegally exclude religious assemblies in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Alternatively, the zoning codes or landmarking laws may permit religious assemblies only with individualized permission from the zoning board or landmarking commissions. Zoning boards or landmarking commission may use that authority in illegally discriminatory ways.¹

The RLUIPA

The Religious Land Use and Institutionalized Persons Act, commonly known by its acronym RLUIPA, is a federal law enacted by Congress and signed by President Clinton in 2000 requiring local governments, when implementing and enforcing land use regulations, to do so without burdening the exercise of religion by religious institutions and to treat them in the same manner as non-religious institutions. When a local government denies or conditions an application to build a house of worship or to expand a building to accommodate religious practice, the religious institution often sues under RLUIPA, claiming discrimination by the local government.² It also protects individuals and religious institutions, including churches, mosques, and synagogues, in their use of land and buildings for religious purposes.³

In the process of enacting RLUIPA, Congress found many cases where local communities banned religious uses based on loss of tax revenue. This is due to the fact that religious

organizations do not pay property taxes. Communities typically deny the religious uses in order to maintain areas for tax generating uses, such as retail, residential, entertainment or industrial uses, but excluding religious uses; this is pure and simple religious discrimination.⁴

In leveling the playing field, Congress provided four separate areas of relief in RLUIPA for churches, synagogues, mosques and temples. The first, called the Substantial Burden prong, provides that a government may not impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a religious assembly or institution. The exception to this is unless the government is able to show the imposition of the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that interest.⁵

The second, called the Equal Terms prong, provides that no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.⁶

The third area of relief provided by Congress is the Non-Discrimination clause. This provides that a local government may not make a land use determination that discriminates against any assembly or institution on the basis of religion or religious denomination.⁷

The final area of relief under RLUIPA is the Exclusions and Unreasonable Limitations clause. It provides that a local government may not impose or implement a land use regulation that: (a) totally excludes religious assemblies from a jurisdiction; or (b) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. Further, where a violation of the law is established, RLUIPA provides money damages and injunctive relief as remedies.⁸

Is Eminent Domain a Land Use Regulation Under RLUIPA?

Litigation focusing on the term "land use regulation" occasionally asks courts to decide whether RLUIPA applies to eminent domain proceedings. Generally, courts deciding this question have held that RLUIPA does not apply to eminent domain because it is not a "zoning or landmarking law." Instead, these courts have held that zoning and eminent domain are two completely different and unrelated concepts. The main argument to support this conclusion is that zoning and eminent domain are derived from two separate sources of power. The zoning power is derived from the state's police power, while the eminent domain power is derived from the Takings Clause of the United States Constitution's Fifth Amendment. However, at least one court has applied the RLUIPA in an eminent-

domain case because the authority to condemn the property came from the city's zoning scheme. (See *St. John's United Church of Christ v. City of Chicago* below.) A court may be more inclined to find that eminent domain falls within the scope of RLUIPA if it was authorized by a zoning ordinance or comprehensive plan.⁹

To date, no cases questioning RLUIPA's application to eminent domain have reached the United States Supreme Court. A 2003 Seventh Circuit case, *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007) was appealed to the United States Supreme Court but the court declined to hear the appeal. A refusal to hear means that the United States Supreme Court did not consider the Seventh Circuit Court's decision to be obviously wrong on the legal merits, or that the facts of the particular case could have broader constitutional implications. The United States Supreme Court generally has a substantial workload and tends to refuse appeals which have already received due process in lower courts. A refusal to hear a case does not preclude hearing a similar case in the future, if the court feels that further judicial review is needed.¹⁰

Cases In Which RLUIPA Was Violated

In *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005), a federal appeals court ruled that a city violated RLUIPA's equal terms provision by forbidding a rabbi to conduct religious services in his residence without a permit while allowing other non-religious uses in the same district, including cub scouts and family gatherings.¹¹

In *Primera Iglesia Bautista Hispana v. Broward County*, 450 F.3d 1295 (11th Cir. 2006), a federal appeals court ruled that the equal terms provision of RLUIPA may be violated by a land use regulation in at least three ways: "(1) by facially differentiating between religious and nonreligious assemblies or institutions; (2) by 'gerrymandering' to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions, despite being neutral on its face; or (3) or through selective enforcement against religious, as opposed to nonreligious, assemblies or institutions of a truly neutral regulation."¹²

In *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2nd Cir. 2007), a federal appeals court ruled that a city violated RLUIPA in denying a private religious school permission to expand its facility, since the denial imposed a substantial burden on religious exercise. The court concluded:

A burden need not be found insuperable to be held substantial. When the school has no ready alternatives, or where the alternatives require substantial delay, uncertainty, and expense, a complete denial of the school's application might be indicative of a substantial burden.¹³

In *Lighthouse Institute for Evangelism v. City of Long Branch*, 510 F.3d 253 (3rd Cir. 2007), a federal appeals court ruled that a city's zoning ordinance that permitted a range of different uses in the central commercial district (including a restaurant, variety store, college, assembly hall, bowling alley, movie theater, municipal building, new automobile and boat showroom), but barred religious organizations from the same district, violated RLUIPA since it treated religious organizations on less than equal terms with non-religious institutions.¹⁴

In *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006), a federal appeals court ruled that a county board of supervisors' denial of a religious organization's application for a permit to construct a temple on land zoned for agricultural use violated RLUIPA since it imposed a substantial burden on the organization's religious exercise. The court noted that the board gave such broad reasons for denying the application (increased traffic and noise) that very little property was left in the community upon which the temple could be built.¹⁵

A number of municipalities have enacted ordinances designed to protect and preserve buildings having historic or cultural significance. Such ordinances often are referred to as "landmark" laws. Occasionally, municipalities attempt to block the sale or demolition of church property on the basis of landmark ordinances. Of course, churches respond by claiming that use of a landmark law in such a context violates the First Amendment's guaranty of religious freedom.¹⁶

Cases In Which RLUIPA Was Not Violated

In *Living Water Church of God v. Charter Township*, 258 Fed. Appx. 729 (6th Cir. 2007), a federal appeals court ruled that a city's denial of a church's application for a special use permit to build a new facility in excess of 25,000 square feet on its property did not violate RLUIPA since it did not amount to a substantial burden on the church's religious exercise. The court stressed that the city's denial did not require the church to violate or forgo its religious beliefs or choose between those beliefs and a benefit to which it was entitled.¹⁷

In *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007), a federal appeals court ruled that a city's plan to acquire a church cemetery using the power of eminent domain in order to facilitate expansion of an airport was not a land use regulation subject to RLUIPA. The court observed:

"Given the importance of eminent domain as a governmental power affecting land use, we think that if Congress had wanted to include eminent domain within RLUIPA, it would have said something. Indeed, before federal law starts interfering with the fundamental state power of eminent domain, it is likely that we would need a clear statement from Congress."¹⁸

Conclusion

RLUIPA is a two-pronged act, signed into law in 2000, to ensure local and state governments do not infringe on the religious freedoms of institutionalized persons or religious organizations. Since then, the “institutionalized persons” prong debate has been put to rest, as the Supreme Court unanimously ruled in *Cutter v. Wilkinson*, 544 U.S. 709 (2005) that RLUIPA does not violate the Establishment Clause of the United States Constitution.²⁴

In short, not only is RLUIPA constitutional, it is also absolutely necessary to counter the “widespread pattern of religious discrimination in America” against ethnic and racial minorities, as well as people of non-traditional religious beliefs. RLUIPA ensures that the religious freedom principles that our Founding Fathers established in the eighteenth century continue to remain unmolested and at the forefront of American public policy as our nation continues to advance during the twenty-first century.²⁵

Endnotes

1. www.justice.gov
2. <http://www.rc.com>
3. <https://aclj.org>
4. www.attorneysforlanduse.com
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. <https://en.wikipedia.org>
10. *Id.*
11. www.churchlawandtax.com
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. www.rluiipa-defense.com
21. *Id.*
22. *Id.*
23. *Id.*
24. <https://scholarship.richmond.edu>
25. *Id.*

In *Vision Church v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006), a federal appeals court ruled that a city’s zoning ordinance that required churches to obtain a special use permit to construct a sanctuary in a residential district did not violate RLUIPA since the requirement of a permit did not amount to a total exclusion of churches. The court noted that the zoning ordinance set forth the factors to be considered by the city in evaluating an application for a special use permit, and the permit requirement was neutral since it applied to schools, utilities, and other secular institutions, and was justified by legitimate, non-discriminatory municipal planning goals of limiting development, traffic, and noise, and preserving open space.¹⁹

RLUIPA Examples

Example One

A church is denied a permit to build an addition to accommodate more Sunday school classes, which it believes it needs to carry out its religious mission. This may violate Section 2(a) of RLUIPA if the town cannot show a compelling reason for the denial.²⁰

Example Two

A mosque leases space in a storefront. Zoning officials deny an occupancy permit since houses of worship are forbidden in that zone. However, fraternal organizations, meeting halls, and banquet facilities are all permitted to operate in the same zone. This may violate Section 2(b)(1) of RLUIPA which states that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.²¹

Example Three

A Holiness congregation is denied a building permit for a church despite meeting all of the requirements for height, setback, and parking required by the zoning code. The zoning administrator is overheard making a disparaging remark about Holiness people. If it were proven that the permit was denied because the applicants were Holiness, this would violate Section 2(b)(2) of RLUIPA which bars discrimination “against any assembly or institution on the basis of religion or religious denomination.”²²

Example Four

A town, seeking to preserve tax revenues, enacts a law that no new churches or other houses of worship will be permitted. Such a total exclusion may violate Section 2(b)(3)(A) and (B) of RLUIPA which provides that: “No government shall impose or implement a land use regulation” that “totally excludes religious assemblies from a jurisdiction,” or “unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”²³

For more information or professional assistance with church or para-church matters, contact: Dr. Wyatt McDowell (JD, LLM) at (740) 938-4067 or www.clergyzoom.com.



Legal

Three More Recent United States Supreme Court Decisions

Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S. __ (2020)

Religious Schools Permitted to Terminate Employment of Teachers

This case addresses whether the First Amendment ministerial exception doctrine of the United States Constitution prevents courts from entertaining an age or disability employment discrimination claim brought by two elementary school teachers against their prior employers.

Facts

These two cases involve two former teachers from different Roman Catholic schools in Los Angeles. Both teachers were employed under nearly identical agreements that emphasized the Catholic faith as central to their work as teachers, and both sued their Catholic school employers after they were terminated.

Agnes Morrissey-Berru worked at Our Lady of Guadalupe School (the school) where she taught fifth and sixth grade students all their subjects, including religion. Even outside of those classes, she was expected to fulfill the school's mission "to develop and promote a Catholic School Faith Community" throughout all areas of her employment. In her role as a Catholic educator, she tailored her lessons to conform with Catholic teachings, prepared her students for the sacraments of Communion and Confession, and attended Mass and prayed with them. Both Morrissey-Berru's employment agreement and the employee handbook specifically state that the school's mission was "to develop and promote a Catholic School Faith Community" and informed Morrissey-Berru that "all her duties and responsibilities as a Teacher were to be performed within this overriding commitment" and that failing to do so could result in termination for cause.

In 2014, the school moved Morrissey-Berru to part-time before ultimately declining to renew her contract entirely in 2015. After filing a claim with the Equal Employment Opportunity Commission (EEOC), she filed suit against the school alleging the school violated the Age Discrimination in Employment Act by failing to renew her contract so it could replace her with a younger teacher. The school countered that Morrissey-Berru was asked not to return because of her performance, not her age. The trial court granted the school's motion for summary judgment (court decision without holding a trial) based on the ministerial exception, but, on appeal, the Ninth Circuit Court of Appeals reversed the trial court.

Kristen Biel worked at St. James School (St. James) for roughly a year and a half, first as a substitute teacher for first grade and then as a full-time teacher for fifth grade. She was a generalist teacher and one of the subjects she taught was religion. During the time Biel worked at St. James, she was bound by the terms of her employment agreement, which required that she uphold the school's religious mission, instruct her students in line with Catholic teachings, and serve as a model Catholic figure to her students. Further, the St. James handbook defines "religious development" as the school's first goal and provides that

teachers must “model the faith life,” “exemplify the teachings of Jesus Christ,” “integrate Catholic thought and principles into secular subjects,” and “prepare students to receive the sacraments.” While at St. James, Biel attended a conference that discussed how best to incorporate religious teachings in the classroom.

After Biel’s first year as a full-time teacher, St. James declined to renew her contract. Biel filed a claim with the EEOC alleging St. James relieved her because she needed time off to treat her breast cancer. St. James replied that its decision was based on Biel’s performance issues relating to keeping an orderly classroom and adhering to the set curriculum.

The trial court granted the school’s motion for summary judgment based the ministerial exception, but, on appeal, the Ninth Circuit Court of Appeals reversed the trial court. Both *Morrissey-Berru* and Biel petitioned the United States Supreme Court to challenge the decision of the Ninth Circuit Court of Appeals. The United States Supreme Court agreed to hear both cases, consolidating them under *Our Lady of Guadalupe School*.

Discussion

The “ministerial exception,” which derives from the religion clauses of the First Amendment, prevents civil courts from adjudicating former employee’s discrimination claims against religious schools that employed them.

Courts generally try to stay out of matters involving employment decisions regarding those holding certain important positions with churches and other religious institutions. The Court formally first recognized this principle, known as the “ministerial exception,” in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012). In that case, the United States Supreme Court considered four factors before reaching its conclusion that the employee was a “minister” for purposes of an exception to generally

applicable anti-discrimination laws. However, the United States Supreme Court expressly declined “to adopt a rigid formula for deciding when an employee qualifies as a minister.” The factors relied upon in *Hosanna-Tabor* were specific to that case, and courts may consider different factors to decide whether another employee is a “minister” in another context. The key inquiry is what the employee does. Educating young people in their faith, which was the responsibility of the teachers in these two cases, is at the very core of a private religious school’s mission, and as such, *Morrissey-Berru* and Biel qualify for the exception recognized in *Hosanna-Tabor*.

Finally, the United States Supreme Court stated: “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.”

Conclusion

The United States Supreme Court reversed the Ninth Circuit on the grounds that the Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion. Justice Samuel Alito authored the 7-2 majority opinion.

Dissenting, Justices Sonia Sotomayor and Ruth Bader Ginsburg criticized the court for reducing its analysis, in their view, to one consideration: whether a church thinks its employees play an important religious role. In their view, the teachers taught primarily secular subjects, lacked substantial religious titles and training, and were not required to be Catholic.

Bottom Line

The United States Supreme Court first acknowledged the “ministerial exception” in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*,

565 U.S. 171 (2012). In that opinion, the Court renounced any “rigid formula” for determining which employees qualified for the exception but announced four relevant circumstances in deciding that the teacher in question was unable to maintain her lawsuit against her employer: (1) the employee had been given the title “minister;” (2) the employee had received significant religious training, (3) the employee held herself out as a minister of the church, and (4) the employee’s job duties reflected a role in conveying the church’s message and carrying out its mission. Subsequently, several lower courts interpreted the four factors as a series of elements in a test to be weighed against one another, which, in some cases, resulted in a relatively high bar for the exception’s application.

In *Morrissey-Berru*, the United States Supreme Court clarified that “what matters is what the employee does.” In essence, the United States Supreme Court shifted the emphasis to the fourth factor, mentioned above, from the *Hosanna-Tabor* case. It held that if a teacher is imbued with the responsibility of instructing his or her students on the employer-institution’s faith, such a teacher will fall within the ministerial exception. While the other factors described in *Hosanna-Tabor* made that decision “an especially easy one,” the United States Supreme Court has clearly signaled that the focus of the ministerial exception should be on the duties of the subject employee or teacher.

The practical effect of the United States Supreme Court’s decision in *Morrissey-Berru* is that religious schools now enjoy expanded discretion with regard to employment decisions affecting most, if not all, teachers, so long as they are entrusted with instructing students on faith. In general, religious institutions should feel more comfortable making employment-related decisions for positions that perform important or significant functions. Source: www.mcafeetaft.com

Little Sisters Of The Poor Saints Peters & Paul Home v. Pennsylvania, 591 U.S. ___, 2020

Government Agency Had Power to Create Contraception Coverage Exemptions

This case addresses the question of whether the federal government had the authority under the Affordable Care Act to promulgate religious and moral exemptions from mandatory contraceptive coverage by employers with sincerely held religious objections.

Facts

The Patient Protection and Affordable Care Act of 2010 (ACA) requires covered employers to provide women with “preventive care and screenings” without “any cost sharing requirements,” and relies on Preventive Care Guidelines (Guidelines) “supported by the Health Resources and Services Administration” (HRSA) to determine what “preventive care and screenings” includes. Those Guidelines mandate that health plans provide coverage for all Food and Drug Administration approved contraceptive methods.

In the 2014 case *Burwell v. Hobby Lobby*, the United States Supreme Court struck a balance, holding that the religious accommodation contained in the Affordable Care Act’s regulations provided the key to reconciling the rights of employers, employees, and the government. By extending the accommodation for religious non-profit employers to closely-held for-profit companies, the ruling accommodated objecting employers, while still ensuring that their employees received critically important insurance. In 2016, in *Zubik v. Burwell*, the Court refused to strike down the accommodation, giving the parties another opportunity to find a solution that respected the rights of employer and employee alike.

In 2017, the U.S. Departments of Labor, Health and Human Services, and Treasury issued interim final rules that made the accommodation optional and provided an unconditional exemption from the contraceptive coverage requirement for not-for-profit, educational, and for-profit employers whose owners possessed sincere religious or moral objections to contraception. In defense of the exemption, Little Sisters of the Poor Saints Peter and Paul Home and the Trump Administration argue that the religious accommodation violates the Religious Freedom Restoration Act (RFRA) and that an unconditional exemption is necessary to comply with RFRA.

Multiple states challenged the new rules. Among the first was the state of Pennsylvania and later joined by New Jersey, which challenged the Government in the United States District Court for the Eastern District of Pennsylvania, asserting that the process used by the government agencies violated the Administrative Procedure Act (APA), Title VII of the Civil Rights Act of 1964, and the Equal Protection Clause of the Fourteenth Amendment and the Establishment Clause of the First Amendment of the United States Constitution. The Little Sisters of the Poor Saints Peter and Paul Home, one of the religious organizations that had been part of the earlier litigation, sought to intervene since they would be affected by a ruling favoring the state, which the United States District Court denied but was reversed by the United States Court of Appeals for the Third Circuit. The United States District Court subsequently granted a temporary injunction on the new HHS rulings, which the United States Court of Appeals for the Third Circuit upheld, stating that the new rules violated the APA and were unnecessary by both the ACA and the RFRA making them arbitrary and capricious, and ordering a nationwide injunction on their use. By the time the Pennsylvania case was certified at the United States Supreme Court, the rules had already received a second injunction from being enforced

from the United States Court of Appeals for the Ninth Circuit.

Discussion

First, the United States Supreme Court considered whether the Departments had the statutory authority to promulgate the rules. The relevant provision of the ACA requires insurers provide women “additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by Health Resources and Services Administration (HRSA).” The Court interpreted this “as provided for” language to be a broad grant of authority and discretion to decide what counts as preventive care and screenings, including the ability to identify and create exemptions. Because it found the ACA gave the Departments the authority to promulgate these exceptions, it did not need to consider whether the RFRA required or authorized the exceptions. Nonetheless, it was appropriate for the Departments to consider RFRA because of the likelihood of conflict between the contraceptive mandate and RFRA.

Then, the United States Supreme Court considered whether the Departments had violated the procedural requirements of the APA. The Court rejected the argument that the procedure was defective due to the Departments’ naming the relevant document “Interim Final Rules with Request for Comments” instead of “General Notice of Proposed Rulemaking.” Additionally, the Court rejected the argument that the rule was invalid because the Departments had failed to keep an open mind during the notice-and-comment period. The court further stated that open-mindedness is not a requirement of the APA.

Conclusion

The United States Supreme Court reversed the decision of the United States Court of Appeals for the Third Circuit by a 7-2 vote. Justice Thomas authored the opinion of the Court, joined by Chief Justice Roberts and Justices Alito, Gorsuch, and Kavanaugh.

Justice Kagan filed an opinion concurring in the judgment, joined by Justice Breyer. Justice Ginsburg filed a dissenting opinion, joined by Justice Sotomayor.

The United States Supreme Court first rejected Pennsylvania's argument that religious exemptions are not authorized by the Affordable Care Act. The Court held that on its face, the Affordable Care Act "is completely silent as to what" the preventive-care "guidelines must contain," and therefore "gives HRSA broad discretion to define preventive care and screenings and to create the religious and moral exemptions." The United States Supreme Court also held that it was appropriate for the government, in promulgating the exemption, to consider the "very broad protection for religious liberty" provided by the Religious Freedom Restoration Act. The Court noted that "the potential for conflict between the contraceptive mandate and RFRA" is clear, and settled administrative law and held that an agency may not "entirely fail to consider an important aspect of the problem" it is addressing.

Finally, the United States Supreme Court rejected the Third Circuit's holding that the exemption was invalid because the government "lacked the requisite flexible and open-minded attitude" when it considered and promulgated the exemption. The Court held that there is no "open-mindedness test" under the Administrative Procedures Act.

Bottom Line

Most people probably had not heard of The Little Sisters of the Poor Saints Peter and Paul Home before it joined the fight with the federal government over required coverage of contraception in employer-provided medical insurance plans. That was the heart of a closely watched decision from the United States Supreme Court released July 8, 2020.

Many Christians assumed this decision could be one of the most important in recent times in affirming the First Amendment right of free exercise of religion and in causing

further damage to one of the signature rights established under the Patient Protection and Affordable Care Act of 2010, also known as the ACA or Obamacare. The decision, however, is more proof that T.S. Elliott was right about how things may end — not with a bang, but a whimper.

A careful reading of the court's opinion finds this is not a First Amendment case at all. Instead, it is a case about how government agencies may interpret legislation and what accommodations they must make for people with sincere religious beliefs because of the 1993 Religious Freedom Restoration Act. Source: <https://baptistnews.com> (07/16/20)

Espinoza v. Montana Department of Revenue, 591 U.S. __ (2020)

Supreme Court Gives Religious Schools More Access to State Aid

This case addresses whether a state based school tax credit program that provided financial incentives for individuals and corporations to donate for private school tuition scholarships is constitutional. Most of the schools that signed up to participate were religious.

Facts

Petitioners Kendra Espinoza and others are low-income mothers who applied for scholarships to keep their children enrolled in Stillwater Christian School, in Kalispell, Montana. The Montana legislature enacted a tax-credit scholarship program in 2015 to provide a \$150 dollar-for-dollar tax credit to individuals and businesses who donate to private, nonprofit scholarship organizations. The Montana legislature also allotted \$3 million annually to fund the tax credits scholarship program, beginning in 2016. If the annual allotment is exhausted, it increases by 10 percent the following year, with the program scheduled to expire in 2023.

Shortly after the program was enacted, the Montana Department of Revenue promulgated an administrative rule

("Rule 1") prohibiting scholarship recipients from using their scholarships at religious schools, citing a provision of the state constitution that prohibits "direct or indirect" public funding of religiously affiliated educational programs.

Espinoza and the other mothers filed a lawsuit in state court challenging Rule 1. The trial court determined that the scholarship program was constitutional without Rule 1 and granted the plaintiffs' motion for summary judgment (court decision without holding a trial). On appeal, the Department of Revenue argued that the program is unconstitutional without Rule 1. The Montana Supreme Court agreed with the Department of Revenue and reversed the lower court, holding that the entire program violated the state constitution's no-aid provision. That violation, the court held, required invalidating the entire program.

Discussion

Chief Justice Roberts wrote the opinion and explained the Court's existing precedents. The basic issue with the Montana no-aid provision was that it required a private school to "divorce itself from any religious control or affiliation" before participating in the school choice program. The Chief Justice analogized this to the exclusion of a church from a playground-resurfacing grant program in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. __ (2017). In both cases, "otherwise eligible recipients from a public benefit" were denied access "solely because of their religious character." This sort of exclusion—based on an organization's religious status—was distinguishable, in the Chief Justice's view, from funding exclusions on the basis of religious conduct, which have been upheld under the Establishment Clause. In *Locke v. Davey*, 540 U.S. 712 (2004), the Court upheld the latter type of restriction: a state higher education scholarship that barred recipients from using funds to pursue a career in ministry. Unlike this limit on pursuing an "essentially religious endeavor," the Montana no-aid clause barred all aid to a religious

school “simply because of what it is.” Moreover, unlike the legitimate establishment concerns limiting public funding for ecclesiastical training in *Locke*, the Montana no-aid provision emerged from an unsavory history of anti-Catholic discrimination.

The Court further stated:

The Montana Supreme Court should have “disregarded” the no-aid provision and decided this case “conformably to the Constitution” of the United States. That “supreme law of the land” condemns discrimination against religious schools and the families whose children attend them. They are “members of the community too,” and their exclusion from the scholarship program here is “odious to our Constitution” and “cannot stand” (citing Trinity Lutheran).

Conclusion

The United States Supreme Court ruled by a 5-4 vote that the Montana Supreme Court violated the Free Exercise Clause when it applied a state constitutional no-aid provision to bar religious schools from receiving scholarship money under a state tax-credit program. The Court held that Montana’s no-aid provision “bars all aid to a religious school simply because of what it is, putting the school to a choice between being religious or

receiving government benefits.” The Court further held that “achieving greater separation of church and State than is already ensured under the Establishment Clause” is not a compelling state interest, and that the no-aid provision does not advance Montana’s interest in focusing financial support on public education, because it cuts off funding only to religious schools while allowing funding for other non-public schools.

Finally, the Court rejected the argument that there was no Free Exercise violation because the Montana courts struck down the entire scholarship program for both religious and non-religious private schools. The Court explained that, since the Free Exercise Clause precludes applying Montana’s no-aid provision, the federal Constitution eliminates any “basis for terminating the program.”

Chief Justice Roberts delivered the opinion of the Court, joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh. Justice Ginsburg filed a dissent joined by Justice Kagan; Justice Breyer filed a dissent joined in part by Justice Kagan; and Justice Sotomayor filed a separate dissent.

Bottom Line

Churches or denominations with religious schools should note the

following significant points regarding the United States Supreme Court’s decision:

1. Most importantly, this case will allow religious schools, at least in some cases, to benefit from financial aid made available to all other kinds of schools (i.e., public and private secular schools). Religious schools cannot be excluded from such aid solely on the basis of their religious status. As the United States Supreme Court concluded, religious schools are “members of the community too,” and their exclusion from the scholarship program here is “odious to our Constitution” and “cannot stand” (citing Trinity Lutheran).
2. The United States Supreme Court noted that any Establishment Clause objection to the Montana scholarship program “is particularly unavailing because the government support makes its way to religious schools only as a result of Montanans independently choosing to spend their scholarships at such schools.” In other words, the primary beneficiaries of the scholarship program were parents who were empowered to use scholarships to pay for the tuition of their children in a school of their choice. The fact that this might include a religious school did not make such schools the primary beneficiary. Source: www.churchlawandtax.com

Internal Revenue Service

New Simplified Diem Rates

The Internal Revenue Service issued new simplified per diem rates on September 11, 2020 for 2020-2021 that taxpayers can use to substantiate the amount of expenses they can deduct for lodging, meals and incidental expenses when they are traveling away from home. These rates are effective October 1, 2020 thru September 30, 2021.

For the high-low substantiation method, the per diem rates are \$292 (down from \$297) for travel to any high-cost locale and \$198 (down from \$200) for travel to anywhere else within the continental United States. The amount of the \$292 high rate and \$198 low rate that is treated as paid for meals is \$71 for travel to any high-cost locality and \$60 for travel to any other locality within the continental United States. The per-diem rate for the incidental-expenses-only deduction remains unchanged at \$5 per day for any locality of travel.

Employers may pay a per-diem amount to an employee on business-travel status instead of reimbursing actual substantiated expenses for away-from-home lodging, meal and incidental expenses. If the rate paid does not exceed IRS-approved maximums, and the employee provides simplified substantiation (time, place, and business purpose), the reimbursement is treated as made under an accountable plan (it is not subject to income or payroll-tax withholding) and is not reported on the employee’s Form W-2. Receipts for expenses are not required.

Source: www.ecfa.org (10/01/20)

Religion

Americans' Confidence in Churches Increases for First Time in Seven Years

While people could not physically visit churches for much of 2020, their opinion of the church or organized religion grew.

For the first time since 2013, Americans' confidence in the institution of the church increased in Gallup's annual tracking poll. The percentage of those who say they have a great deal or quite a lot of confidence in the church climbed from 36% to 42%. The six-point jump is the largest one-time increase for the church since Gallup began conducting the survey in 1973. Source: <https://factsandtrends.net> (09/11/20)

Majority of White Christians See No Pattern in Killings

During a summer punctuated by White police officers gunning down Black body after Black body, the Public Religion Research Institute (PRRI) found that most White Christians—across denominations—continued to see such shootings as isolated incidents.

Based on polling done in June 2020, the majority of White mainline Protestants (53 percent), White Catholics (56 percent), and White evangelicals (72 percent) believe that when the police kill a Black man, it is not representative of a pattern in the way law enforcement treats Black people.

Furthermore, many White Christians also believe that discrimination against White people has become “just as big of a problem” as discrimination against Black people. On this question, 43 percent of White mainline Protestants agreed, along with 51 percent of White Catholics, and 56 percent of White evangelicals.

Source: www.christiancentury.org (09/07/20)

1 in 5 Churches Facing Permanent Closure Within 18 Months Due to COVID-19 Shutdowns

As many as one in five churches could permanently close as a result of shutdowns stemming from the coronavirus pandemic, according to David Kinnaman, president of the prominent Christian research organization Barna Group.

He noted that although many churches have opened as states' shutdown orders are loosened, their services have had “a lot less people coming.”

The disruptions related to giving are very important; however, for those churches that have reopened, they are seeing much smaller numbers of people show up. So simply reopening a church does not fix the underlying economic challenges a church might have.

Source: www.christianpost.com (08/26/20)

No Race Problem Here: Many Practicing Christians Remain Ambivalent

As racial tensions have risen in recent months, a new report reveals that some Christians are becoming less motivated to act on racial justice, and an increasing share say there is “definitely” not a race problem in the country.

The findings are based on an online survey of 1,525 U.S. adults between June 18 and July 6, 2020, a time period characterized by national protests over the death of George Floyd, as well as the deaths of Ahmaud Arbery and Breonna Taylor.

Many U.S. adults in general — and practicing Christians specifically — continue to think there is not a race problem in the country, the report found. The number of U.S. adults who said there “definitely” is such a problem remained nearly the same from 2019 to 2020, dropping slightly from 49% to 46%, while practicing Christians' response similarly dipped slightly from 46% to 43%.



Asked if they would take certain steps “if (those steps would) improve racial equality,” practicing Christians said they would read a book about racism (62%); attend diversity training (48%); attend implicit bias training (40%); take a course on race and ethnicity (46%); support some form of reparations (40%); change the type of candidate they typically vote for (42%); change their news media consumption habits to be more justice oriented (46%); and change their spending habits to be more justice oriented (47%). Source: <https://religionnews.com> (09/15/20)



Pew Survey Shows Teens, Parents Practice Faith Together, Though Teens Are Less Religious

A Pew Research Center study released September 10, 2020 suggests that most American teens share religious identities and faith practices with their parents, but that teenagers are much less likely than their parents to say religion is very important to them.

For instance, nearly half of all teens say they hold all the same religious beliefs as their parents, and most have gone to religious services with at least one parent. But while 43% of parents said religion is “very important” to them, just 24% of teens said the same. Source: www.nconline.org (09/16/20)

Half of U.S. Christians Say Casual Sex Between Consenting Adults Is Sometimes or Always Acceptable

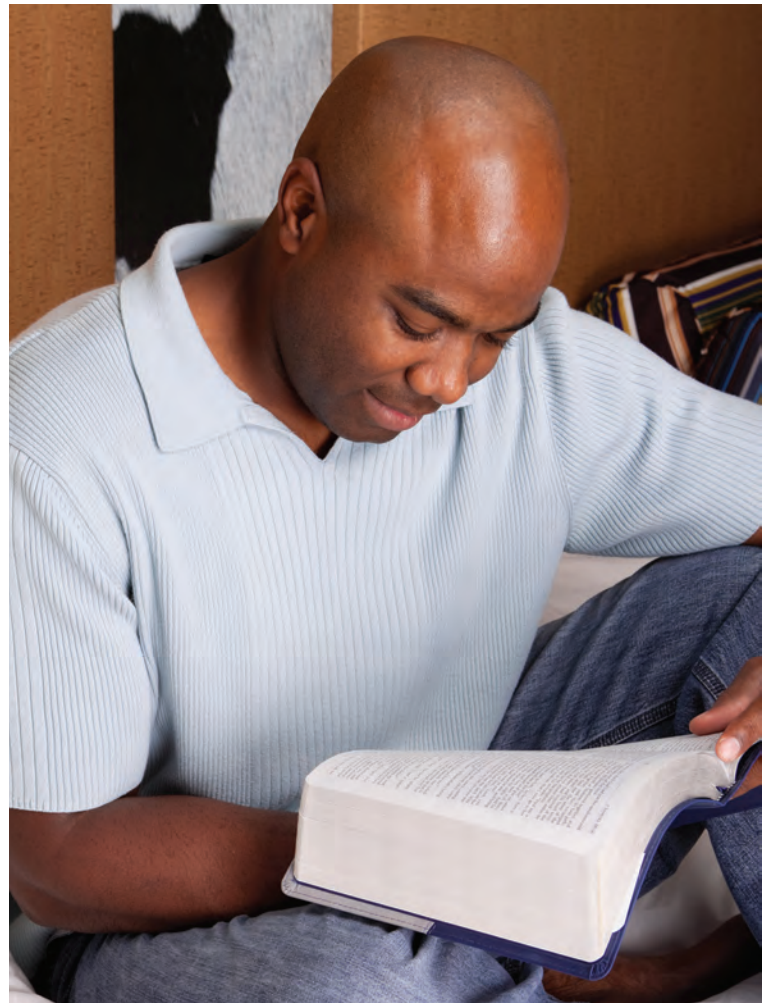
Many Christian traditions disapprove of premarital sex. And even though Christians in the United States hold less permissive views than religiously unaffiliated Americans about dating and sex, most say it’s acceptable in at least some circumstances for consenting adults to have sex outside of marriage, according to a recent Pew Research Center survey.

Half of Christians say casual sex – defined in the survey as sex between consenting adults who are not in a committed romantic relationship – is sometimes or always acceptable. Six-in-ten Catholics (62%) take this view, as do 56% of Protestants in the historically Black tradition, 54% of mainline Protestants and 36% of evangelical Protestants. Source: www.pewresearch.org (08/31/20)

People Are Reading the Bible Less During the Pandemic

People may be reading the news and “doomscrolling” through social media during the coronavirus pandemic. But what they don’t appear to be reading is the Bible. That’s according to the tenth annual State of the Bible survey, released July 22, 2020 by the American Bible Society.

The number of American adults the American Bible Society considers “Bible engaged,” based on how frequently they read scripture and its impact on their relationships and choices, dropped from 28 percent to 22.7 percent between January and June, 2020, according to additional data collected by the American Bible Society in June, 2020. Source: www.christiancentury.org (08/10/20)



Miscellaneous

Black Americans Nearly 3 Times More Likely to Be Killed By Police Than White Americans

In 2019 data of all police killings in the country compiled by Mapping Police Violence, Black Americans were nearly three times more likely to die from police than White Americans. Other statistics showed that Black Americans were nearly one-and-a-half times more likely to be unarmed before their death.

Overall, in 2019, 24 percent of all police killings were of Black Americans when just 13 percent of the U.S. population is Black – an 11-point discrepancy. Mapping Police Violence also showed that 99 percent of all officers involved in all police killings had no criminal charges pressed against them. Source: www.statista.com (06/02/20)

More Than Half of Businesses That Closed During the Pandemic Won't Reopen

About 60% of businesses that have closed during the coronavirus pandemic will never reopen.

As of August 31, 2020, nearly 163,700 businesses on Yelp have closed since March 1, 2020, the company said, marking a 23% increase from July 10, 2020. Of those, about 98,000 say they've shut their doors for good. Of all closed businesses, about 32,100 are restaurants, and close to 19,600, or about 61%, have closed permanently. Source: www.cnn.com 09/16/20)

The Rich Own 87% of All Stocks

Just over half (52%) of American families have some level of investment in the stock market, mostly through 401(k)s and other retirement accounts, according to the Pew Research Center. Only 14% of households are directly invested in the stock market.

As of the first quarter of 2020, the wealthiest 10% of American households owned 87% of all stocks and mutual funds, according to the Federal Reserve. That's up from 82% in 2009 when the last bull market began.

Black households own just 1.6% of stocks and mutual funds, according to the Federal Reserve. Hispanic families owned the same amount. By comparison, White households control a staggering 92% of stocks and mutual funds. Source: www.cnn.com 09/16/20)



A table stands empty at a permanently closed restaurant in Manhattan on August 31, 2020 in New York City.

Misconduct by Government Officials Is A Factor in 54% of Wrongful Convictions

A study published on September 1, 2020 by the National Registry of Exonerations found that misconduct by government officials has contributed to 54% of the false convictions of defendants who were later exonerated in the past three decades, with police misconduct being a factor in 35% of such cases.

The 185-page study examined 2,400 exonerations in the registry dating back to 1989. It grouped officials' misconduct into five categories, including witness tampering, misconduct in interrogations, fabricating evidence, concealing exculpatory evidence and misconduct at trial.

In addition to police, prosecutors committed misconduct in 30% of the cases examined, the study says. Misconduct by forensic analysts was a factor in 3% of cases, while misconduct by child welfare workers was a factor in 2% of cases.

The study says that Black defendants were most impacted by officials' misconduct. Among cases involving Black exonerees, the rate of misconduct was 57%, compared to 52%

among White exonerees. Misconduct was committed in 87% of cases against Black exonerees who were sentenced to death, compared to 68% of their White counterparts. Source: www.cnn.com (09/17/20)

Racism Has Cost U.S. Economy \$16 Trillion in 20 Years

According to a new report from Citigroup Inc., systemic racism in the United States has had a huge cost to the economy: \$16 trillion over the past two decades.

That's the combined cost of disparities in wages, education, investment in Black-owned businesses, and the housing market.

According to the estimates from Citigroup's research, racism impacting Black entrepreneurs has cost the United States \$13 trillion of business revenue and potentially 6.1 million jobs that could have been created — each year.

"Present racial gaps in income, housing, education, business ownership and financing, and wealth are derived from centuries of bias and institutionalized segregation, producing not only societal, but also real economic losses," the report noted. Source: <https://finance.yahoo.com> (09/23/20)

