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A Federal Trial Court Dismisses a Nun-Priest Sexual Harassment Claim: A Dubious Case for Invocation of the "Ministerial Exception"



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Last week, a federal district court in Erie, Pennsylvania, ruled on an unusual sexual harassment claim by a former nun against the employer of a priest.

Lynette Petruska sued Gannon University, alleging that she had been harassed by then-University President Monsignor David Rubino. But Judge Sean J. McLaughlin held that, due to the "ministerial exception," a religious institution cannot be sued under federal anti-discrimination laws.

The "ministerial exception" -- widely observed by courts in the United States - puts religious employees outside the protections of the anti-discrimination laws, on the broad ground that if the courts heard such cases, they would unduly interfere with the internal procedures of religious institutions.

The Court of Appeals for the Third Circuit - which will hear Petruska's appeal - ought to reverse the trial court's decision, and allow her case to go forward. Not only is the ministerial exception

itself problematic, it is especially problematic in this case.

The Ministerial Exception Wrongly Puts Courts in the Shoes of the Legislature

First, the ministerial exception is generally problematic. It is a court-created exception, but any such exception - if it comes at all -- should come through the legislature, not the courts. The ministerial exception is actually a judicially crafted accommodation for religion.

The legislature has the power to convene hearings at which it can listen to wide-ranging expert testimony, and engage in an extended study of the issue. They are institutionally crafted to be able to ask the larger questions about the public good.

The courts, unlike the legislature, are limited to the record created by two parties to a particular dispute, or to the particular religious institution to which those two parties belong. The court has a necessarily limited view of the public policy issue before it.

In sum, the legislature - unlike the courts - can address the whole universe of relevant considerations, over time. Accordingly, it is in a far better position to decide if an accommodation of religion - such as, here, the "ministerial exception" - serves the larger common good. It is capable of looking beyond the simple dichotomy of a case, and therefore will not be unduly influenced by a single set of facts. Legislatures are immune to the litigation tactic of choosing the worst case scenario to push a particular agenda.

Significantly, in [*Employment Div. v. Smith*](#), the Supreme Court held that generally-applicable drug laws apply even to religious peyote use - in the absence of a legislatively-created exception. It thus has left the question of whether to make religious exceptions to federal drug statutes with Congress - not the courts.

Congress Has Already Created the Only Exception that is Constitutionally Necessary

Defenders of a court-made "ministerial exception" to the anti-discrimination laws say that the Establishment Clause requires it. Without such an exception, they argue, courts will become inappropriately entangled in the religious doctrine that determines the criteria for religious employees, and more generally, in religious institutions' employment practices. But they ignore the fact that Congress has already created such an exception - and that limited exception is all that is constitutionally required.

Doubtless, no court should be telling the Catholic Church, for example, that it must have women as priests. That is a matter for its internal determination, and is based on the Church's reading of scripture and tradition. But, crucially, that is also the very type of matter Congress has already addressed in the legislatively-created exception for religious employers from the federal anti-discrimination laws.

The exception says that such employers may discriminate on the basis of religious belief: They need not hire non-believers, for instance. And the Supreme Court upheld this exception in [*Corporation of Presiding Bishop v. Amos*](#) - where the Court held that a church could invoke the

exception even in the case of a janitor.

In contrast, there are plenty of employment practices by religious entities that are discriminatory, yet not religiously motivated. Congress did not provide an anti-discrimination law exception for these practices. And it was wise not to do so.

For example, suppose a religious employee is fired because she reported criminal conduct to the authorities (say, for example, childhood sexual abuse by a priest). Or suppose she is demoted because she publicly criticized her institution for violating the law. She is a classic whistleblower, and the fact that her employer is religious should not change the importance of encouraging her, and others like her, to report illegal conduct.

There would be a lot less clergy misconduct, including criminal behavior like clergy childhood sexual abuse, out there if the whistleblowers in those institutions were protected from such retaliatory discharge and conduct. And, as noted below, Petruska alleges she is just such a whistleblower. She deserved protection - not demotion.

The anti-discrimination laws, after all, are some of the most important in the country. If the court-created "ministerial exception" is honored, huge numbers of religious employees will be unprotected, even when the adverse employment actions they suffer are not religiously motivated. That is troubling and unjust.

The Third Circuit Should Reject a Broad, Court-Made Ministerial Exception

No wonder, then, that in [*Bollard v. Society of Jesus*](#), the United States Court of Appeals for the Ninth Circuit wisely held that a seminarian's sexual harassment claim could go forward, because the religious sect at issue - Jesuits -- did not claim any religious purpose for the alleged behavior.

In Petruska's case, the Third Circuit should hold, similarly, that there is no plausible claim of religious purpose, and thus let the case go forward.

To see why this is the right ruling, consider the specifics of Petruska's case. She alleges that she was demoted and forced to resign as the University's chaplain in October 2002 because of her gender, because she assisted another person in bringing a similar claim based on the same priest's actions, and because she questioned the bishop's alleged continuing cover-up of clergy abuses. But where is the religious purpose here?

The Third Circuit should reject an expansive ministerial exception that would leave plaintiffs like Petruska in the cold. It is unwarranted and unconstitutional. The courts should be deferring to Congress regarding which anti-discrimination laws will, and will not, be enforced, and in which circumstances.

Trust me, if and when the courts reject the ministerial exception, religious entities will be in their representatives' offices in the blink of an eye to request the exemptions from the anti-discrimination laws they believe they need. And in this era, they have an inordinate power to obtain exemptions. Yet, a responsible Congress will consider their requests seriously, but will take just as seriously the

public's interest in whistleblowers' reporting illegal conduct and in eliminating invidious discrimination.

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