Biblical Citizenship Briefing

July 2020

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In the Courts

Supreme Court Continues to Issue Significant Rulings – Last month, we reviewed the controversial *Bostock v. Clayton County* decision that added "sexual orientation" and "gender identity" to the definition of "sex" under the 1964 Civil Rights Act for purposes of employment. The majority in that 6-3 ruling included Chief Justice John Roberts and Justice Neil Gorsuch, together with the four liberal members of the high court. The majority opinion left important questions regarding the decision's effect on religious liberty, sex-specific accommodations, women's sports, Title IX as it relates to Christian colleges and more. Since then, a number of other important cases before the U.S. Supreme Court have been decided:

Religious Freedom Upheld by the High Court – Three decisions this month have reinforced religious liberty:

Espinoza v. Montana Department of Revenue involved the program established by the Montana Legislature that provides scholarships for students to use toward private school tuition. Several families tried to use the tuition assistance at Stillwater Christian School, but were denied due to the "no-aid" rule by the Montana Dept of Revenue excluding religious schools. The families challenged that rule and the Montana Supreme Court simply dropped the whole program. The parents continued their fight, ultimately prevailing in the high court's ruling. Chief Justice John Roberts wrote the opinion in which he stated, "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." In her dissent, Justice Sotomayor called the ruling "perverse." The National Education Association, the nation's largest professional union, was quick to label the decision as "extreme" and part of a "voucher scheme." Read more here.

Little Sisters of the Poor v. Pennsylvania – Last month we reported the good news that the 9th Circuit U. S. Court of Appeals sent the California Department of Managed Health Care rule forcing churches to provide abortion coverage to employees back to the district court. Similarly, on July 8, the U.S. Supreme Court decided 7-2 that under federal law that organizations with religious or moral objections cannot be forced to provide contraceptives and abortifacients as part of their employee health plans. Only Justices Ginsburg and Sotomayor dissented.

ADF Senior Counsel John Bursch hailed the ruling saying, "The government has no business forcing pro-life and religious organizations to provide drugs and devices that can destroy life. HHS designed its protections to be consistent with previous Supreme Court rulings and ensure that such organizations can pursue their missions consistent with their beliefs as the First Amendment allows … The states that challenged the HHS rules were unable to find a single individual plaintiff who was allegedly harmed by the religious and moral exemptions. That shows that contraceptives are widely available, and that no compelling reason exists for the government to violate the religious and moral convictions of organizations who don't wish to provide abortifacients and artificial contraception." Read more here.

The *Little Sisters of the Poor* decision is already having repercussions. The following day, the U.S. Supreme Court vacated a 9th Circuit U.S. Court of Appeals ruling in *March for Life Education and Defense Fund v. California* and asked the appellate court to reconsider its ruling against March for Life that challenged the abortifacient requirement.

Our Lady of Guadalupe v. Morrissey-Berru – Also in July, the high court expanded the scope of what is known as the "ministerial exception." The 7-2 decision that combined two cases involving Catholic schools held that religious schools may fire or release teachers free from discrimination claims. Here the court affirmed a 2012 ruling, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, and went a step further by defining the role of a "minister" as including teachers who perform a religious function in their jobs. Justice Samuel Alito authored the opinion and stated, "The 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." Read more here and here.

In his opinion piece in the New York Times, Stanford law professor Michael McConnell notes, "Taking the long view, this Supreme Court has been consistently supportive of religious liberty. In 13 cases involving religion since 2012, the religious side prevailed in 12 of them, sometimes by lopsided majorities. Out in the culture wars, religious freedom may be a contested proposition, but in the Supreme Court it is the most consistent part of a jurisprudence of pluralism."

Yes, some of cases mentioned do offer religious liberty for institutions, but the *Bostock* decision did not offer constitutional protection for religious *individuals*, like the owner of Harris Funeral Homes who the court said was wrong in terminating a male employee who, for six years, had been meeting with grieving families and suddenly decided to present himself as a woman in that role. There are still unknowns in interpreting individual religious liberty and more legal battles ahead. (Read more here.)

LA Abortion Law Struck Down – In *June Medical Services v. Russo* the court ruled 5-4 that a bill passed by Louisiana's State Legislature requiring that doctors performing abortions have admitting privileges at nearby hospitals presented an "undue burden" on women seeking abortions. The several cases combined under June Medical Services were not brought by patients, but by abortion providers, to whom the justices in the majority (including Chief Justice Roberts) granted standing to assert the rights of their patients. Alliance Defending Freedom (ADF) General Counsel Kristin Waggoner said, "Women can speak for themselves—they don't need abortion businesses to speak for them. Women seeking abortions have the same right to competent and quality care as patients involved in other surgical procedures. Louisiana's admitting privileges law protected that right. Louisiana abortion providers went to extraordinary lengths to erase a law that state legislators enacted overwhelmingly, in bi-partisan fashion, to promote the wellbeing of women." Louisiana state law has similar requirements for ambulatory surgery centers, but that requirement was not contested. Read more here.

In the News

California Bans State Travel to Idaho – The State of California has already banned state-sponsored travel to Alabama, Iowa, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee and Texas because they have laws considered "discriminatory" on the basis of sexual orientation, gender identity or gender expression (per AB 1887 passed in 2016). On July 1, CA Attorney General Xavier Becerra added Idaho to the list. Why Idaho? The state's HB 509 that requires that birth certificates reflect one's biological sex and HB 500, the Fairness in Women's Sports Act, that restricts those participating in women's sports to biological females. Idaho Gov. Brad Little responded to the California ban by stating, "I do not believe that protecting the rights of women and girls to participate in athletics or recording objective facts constitute discrimination." Read more here and here.

In related news, the ACLU has challenged the Act in the U.S. District Court for the District of Idaho (*Hecox v. Little*). The U.S. Dept. of Justice has filed a statement of interest in support of the Idaho law. That statement cites in part, "...[T]the displacement of even some biological females from school athletics, and from all of the educational benefits that flow from such participation, would have real consequences for those women and for the ability of government to remedy past discrimination against women in athletic educational opportunities and 'to advance full development of' their talents and capacities." Read more here.

Is God Calling You to Public Service? – The deadline to file for scores of elected offices in San Diego County is August 7. Positions on water boards, fire districts, school districts, city offices and more will be on the November 3 ballot. Are you experiencing the Lord's nudge to serve your community? If you are, please let us know so we can pray for you and help you connect with folks who can assist in the process. ***Please pray*** *that God would call many of His people to seek leadership positions in local government and help govern according to biblical principles.*

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