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Justice Department Drops Conscience-Rights Case About Abortion

The Department of Justice has decided not to pursue a case the government originally filed last year against University of Vermont Medical Center (UVMC) on behalf of a former nurse who said she'd been forced to participate in an abortion procedure.

In December 2020 the DOJ Civil Rights Division under the Trump administration filed the suit, saying UVMC had violated amendments that protect religious freedom and conscience rights of healthcare workers, including not discriminating against those who object to participating in abortions or sterilizations.

The DOJ under the Biden administration has dropped the case, in which a nurse was told the procedure she would be assisting with did not include an elective abortion. When she discovered it did, mid-procedure, she asked to be replaced and reminded them of her moral objections, but UVMC refused to replace her with another nurse.

The nurse filed a complaint

with the Health and Human Services Department's Office for Civil Rights, which resulted in the Department of Justice filing suit against the medical center.

The Health and Human Services Department said that “after a detailed evaluation of the underlying legal theory used to issue a referral to the Department of Justice, [they] withdrew the original referral and requested DOJ dismiss the suit against the University of Vermont Medical Center, a request which was granted.”

“This isn't just a shocking failure by the Department of Justice, it's a slap in the face to basic conscience rights,” says Senator Ben Sasse, a Republican representing Nebraska. “The law protects health care providers from being forced to perform procedures they find morally objectionable and the DOJ ought to see this case through.”

This is the second religious liberty case the DOJ has pulled out of this year.



Supreme Court Backs Minnesota Amish in Septic Tank Fight

An Amish group in Minnesota have been fighting local authorities who insist they install septic systems. Their appeal is returning to state court for reconsideration because the U.S. Supreme Court recently sided with them in another freedom case.

Fillmore County in South-eastern Minnesota is requiring septic systems of all residents to dispose of "gray water." The traditional Amish group asked for an exemption because their religion prohibits technology. They offered an accommodation, however, saying they would use earthen basins filled with wood chips to filter water, a method that is allowed in other states like Montana and Wyoming.

However, the county sought a court order against 23 families, which would force them from their homes if they refused. Both the Minnesota Court of Appeals and trial court sided with the county.

The U.S. Supreme Court has sent the case back to the state's Court of Appeals, and suggested they review it because of last month's SCOTUS ruling in a Philadelphia Catholic Social Services case (see Court Issues Fact-specific Ruling below).

Justice Samuel Alito wrote that Minnesota courts "plainly misinterpreted and misapplied" the Religious Land Use and Institutionalized Persons Act, but the next decision will lie with the Minnesota Court.

The county sought a court order against 23 Amish families, despite the Amish suggesting an alternate plan.

Court Issues Fact-specific Ruling

The Supreme Court (SCOTUS) ruled in June that the city of Philadelphia, in *Fulton v. City of Philadelphia*, could not fail to renew Catholic Social Services' foster care contract, because the city's contract had a mechanism to offer discretionary exemptions to agencies. In this case Catholic Social Services, because of their religious beliefs, wanted to deny same-sex families the right to be foster parents, and Philadelphia had decided not to renew their contract based on LGBTQ discrimination.

The court decided that the city could use their ability to extend discretionary exemptions to maintain their contract with Catholic Services, though they also recognized that the city's interest in enforcing non-discrimination protections for same-sex couples was "a weighty one." However, SCOTUS did not go so far as to establish a general right for religious organizations to violate non-discrimination laws. The decision was fact-specific based on the city's already present accommodation mechanism.

"The decision will not affect any foster care programs that do not have the same system for individualized exemptions that were at issue here," said Leslie Cooper, deputy director of the ACLU LGBTQ & HIV Project, continuing, "... this decision does not allow discrimination in other taxpayer-funded government programs such as homeless shelters, disaster relief programs, and health care This is critical given the high rates of discrimination experienced by ... particularly Black and Brown trans women."

- *Ten academics and human rights advocates have called on the Biden administration to sanction Finland's top prosecutor, Raija Toivainen, who filed charges against Christians for stating what they believe the Bible says about homosexuality. They are calling on denial of entry to the U.S., as well as financial sanctions for human rights abuses. The group believes that "no one who holds to the traditional teachings of Judaism, Christianity, Islam, and several other religions on questions of marriage and sexual morality will be safe from state harassment should they ... express their moral and religious convictions."*

- *The U.S. Conference of Catholic Bishops voted to prepare a teaching document on the Holy Communion. It would say whether Catholic politicians — such as President Joe Biden, who supports abortion rights — could take communion. However, Archbishop José H. Gomez of Los Angeles issued a statement that made no distinctions about who could receive communion. Additionally, reports from Rome indicate the Vatican is cautious about approving any document that has prohibitions tied to politics. This issue has been dividing the American Catholic constituency for decades.*

European Union Ban on Head Scarves Unlikely in United States

The European Union's top court declared in July that employers may ban the wearing of head scarves and other religious symbols under certain conditions. The ruling found that a German Muslim cashier and special needs caregiver's suspension was justifiable because of their employers' neutral dress policies.

There is increasing debate about racism in Europe, and a growing number of anti-immigrant political parties. Rules over wearing head scarves have come to symbolize controversy over the integration of Europe's Muslim community, but these laws also prohibit burqas, which cover the whole face and body; and niqabs, which cover the face except for the eyes.

Religious liberty experts say that, though religious garb bans have been at-

tempted before in the U.S., they are unlikely to be passed.

"The United States has the widest protections for religious freedom and religious expression anywhere in the world, and we have very specific accommodations for religious believers in the workplace," says Asma Uddin, a religious liberty lawyer who worked on a landmark workplace discrimination Supreme Court case about head scarves, *EEOC v. Abercrombie and Fitch Stores, Inc.*

"Even though one finds traces within American jurisprudence of the secular animus towards religion, these views are outliers and disfavored in the law, and exceptions that prove the rule," adds Ismail Royer, director of the Religious Freedom Institute's Islam and Religious Freedom Action Team.

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Church Wins in Insurance Case

A Seattle-area church, Cedar Park Assembly of God, challenged the 2018 Washington state law which forced them to offer health insurance coverage for abortions if they also offered maternity care. The 9th U.S. Circuit Court of Appeals decided in July that the law causes injury to the church, which effectively dismisses the case.

The church's complaint showed that their health

insurer quit offering a plan with abortion restrictions after the enactment of SB 6219, and Cedar Park was unable to get replacement coverage. The appeals court acknowledged that their injury was traceable to that law, and sent the case back to district court.

When asked why the Washington state situation exists — even though the U.S. Supreme Court ruled in 2020 in favor of Little

Sisters of the Poor v. Azar exempting their ministries from Obamacare health-insurance requirements that violate their religion — Alliance Defending Freedom attorney Kevin Theriot said the state "is targeting the church and other ministries and businesses because they want to advance the cause of abortion."

Washington state could appeal, but has made no indication of doing so.

- *Mark Janny of Colorado was on parole when he was sent back to jail after he refused to take part in worship services, Bible studies, and religious counseling mandated by his parole officer. He filed suit, in Janny v. Gamez, saying his First Amendment rights had been compromised, but a federal district court ruled against him. However, the Tenth Circuit U.S. Court of Appeals ruled for him in August, recognizing that every person has "the basic right to be free from state-sponsored religious coercion." The decision was hailed by the American Civil Liberties Union and Americans United for Separation of Church and State.*

- *President Biden plans to nominate and appoint the following to serve in the U.S. Department of State and the U.S. Commission on International Religious Freedom — Rashad Hussain, Ambassador-at-Large for International Religious Freedom; Deborah Lipstadt, Special Envoy to Monitor and Combat Anti-Semitism with the Rank of Ambassador; Khizr Khan, Commissioner of the United States Commission on International Religious Freedom; and Sharon Kleinbaum, Commissioner of the United States Commission on International Religious Freedom — to reflect people of all faiths.*

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New Law Requires Florida Students to Observe Daily Moment of Silence

Principals in Florida must now “require teachers to set aside time for a moment of silence” at the start of each day. But, teachers are prohibited from “making suggestions to the nature of any reflection during the moment of silence.”

The bill, signed into law by Gov. Ron DeSantis, does not say how students must use the time, but when he was signing it, the governor stated that, “The idea that you can just push God out

of every institution and be successful — I’m sorry, our Founding Fathers did not believe that.” In front of him was a placard reading, “Protect religious liberty.”

Rep. Omari Hardy believes the law blurs the lines between separation of church and state, because he questioned the motive of those who sponsored the bill.

According to Americans United for Separation of Church and State (AUSCS),

the new law does not actually advance religious freedom. They point out that, “Despite what Christian nationalists believe, truly voluntary prayer has never been removed from public schools. In 1962 and ’63, the Supreme Court struck down laws that *compelled* or *pressured* students to take part in prayer and Bible reading. Those rulings left voluntary prayer by students intact.” Students may or may not pray without pressure.

**This new
law does
not actually
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religious
freedom, for
students or
otherwise.**