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FREEDOM OF EXPRESSION AND CATHOLIC EDUCATORS



"Why can't I express my personal opinion outside the school or parish? I understand that I don't have First Amendment freedom-of-speech rights while I am working, but I don't think that what I do outside the parish or school is the administrator's or pastor's business."

Administrators hear such statements more and more. However honest the complaint may be, it ignores a basic reality: Religious institutions have the legal right to set certain requirements for the conduct of personnel, especially when that conduct violates a religious belief.

Cases involving violation or public repudiation of the sponsoring religion's beliefs are definitely increasing. This is not only a Catholic issue, but also one that can affect virtually every religion. The reader is probably most familiar with Catholic disputes, which can include but are not limited to abortion, cohabitation, living with a partner in an openly gay lifestyle, divorce and remarriage without an annulment, pregnancy of an unmarried woman, artificial insemination, supporting birth control methods not approved by the church, euthanasia, and women's ordination. People are perhaps more aware of such issues and violations now than they would have been 30 years or a century ago. However, as the old adage instructs, there is "nothing new under the sun." Nothing that happens today was impossible a century ago—although bad behavior probably was not public knowledge and may have been hushed up. The author has had conversations with elderly members of her religious community and others who report similar situations occurring 50 to 60 years ago.

So the question still remains: "How Catholic do Catholic school teachers and parish volunteers have to be?" The answer is, on one level, quite simple. One must publicly support or, at least not repudiate, the teachings of the Catholic Church. If one does not support or if one repudiates church teachings, one's position may be terminated.

Three cases will illustrate. In 1980, plaintiff Ms. Dolter, an unmarried pregnant teacher in a Catholic high school, brought a sexual discrimination claim against the school when her contract was not renewed. The school claimed that freedom of religion protections shielded it from liability because sex outside marriage is against the religious beliefs of the Catholic Church. The plaintiff introduced evidence that unmarried male teachers who fathered children were treated differently than unmarried pregnant teachers, although both had engaged in premarital sex. Rejecting the school's claim, the court held that the case was not about freedom of religion or about violating religious beliefs; rather it was

about the unequal application of those beliefs on the basis of sex. Had the school introduced clear evidence that males who fathered children out of wedlock were dismissed, its action may have been upheld. (See *Dolter v. Whalert High School*, 483 F.Supp. 266.)

In the 1991 case of *Little v. St. Mary Magdalene School*, 929 F.2d 944, a non-Catholic teacher was fired after she married a divorced Catholic whose first marriage had not been annulled. Such a marriage was perfectly acceptable in her religion. She had signed a contract containing a Cardinal's Clause, however, which required her to live a life consistent with the teachings of the Catholic Church. The court ruled in favor of the school.

In June 2006 the Third Circuit Court of Appeals rendered a precedent-setting decision in *Curay-Cramer v. Ursuline Academy of Wilmington*, No. 04-4628. The plaintiff had signed a pro-choice ad that was printed in the newspaper and the school terminated her employment. She filed suit, alleging violation of her rights under Title VII and the Pregnancy Discrimination Act. Upholding the lower court's ruling in favor of the school, District Judge Kent Jordan noted that Title VII has a specific provision exempting religious employers from the prohibition against religious discrimination. Further, her claims were without merit:

Short of a declaration that the Pope should pass draft encyclicals through the courts for approval, it is hard to conceive of a more obvious violation of the free exercise rights of the Catholic Church or a clearer case of inappropriate entanglement of church and state.

The religious exemption allows religious institutions to make hiring and firing decisions on the basis of religion. In any other type of institution, such decisions cannot be made on the basis of religious principles. As long as the religious belief is sincerely held, courts will not judge the rightness or wrongness of the belief, since such judgment would violate the required separation of church and state.

Conclusion

When one works in a religious institution, freedom of speech as guaranteed by the First Amendment does not exist. An employee or volunteer must support the religious beliefs of the sponsor. There is no legal requirement that one agree with the beliefs, but courts will generally uphold employment decisions based on an employee's behavior that is inconsistent with the tenets of the sponsoring religion. *JR*