

# High Court Won't Clarify Exemption For Religious Employers


By **Alexis Shanes**

Law360 (June 28, 2021, 4:32 PM EDT) -- The U.S. Supreme Court refused on Monday to take up a Baptist group's challenge to a ruling that allowed an ousted reverend to pursue an employment dispute in court, passing up a chance to clarify whether a legal exemption for religious employers applies to state law tort claims.

The decision to turn away the case leaves intact a Fifth Circuit ruling for the Rev. Will McRaney against the North American Mission Board of the Southern Baptist Convention Inc. That ruling found the secular court could resolve McRaney's employment dispute with "neutral principles of tort law" and without wading into religious waters.

In its February petition for certiorari, the SBC Board called the ruling a "constitutionally impermissible intrusion into church affairs," saying the exception should have kept the courts out of the religion-related dispute over emotional distress, defamation and interference with business relationships.

It also claimed the Fifth Circuit wrongly contradicted [Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission](#) , the high court's 2012 ruling that removed the courts from ministers' discrimination claims against religious groups.

The First Amendment-based exception saw an expansion in the high court's ruling last year in [Our Lady of Guadalupe School v. Morrissey-Berru](#) , which took a broad approach to applying the decades-old legal doctrine.

The SBC Board's petition drew amicus briefs in March and April. Among its supporters were 10 religious liberty professors; 16 states, led by Texas; and a host of Christian, Jewish and Muslim religious groups.

McRaney, the former director of an SBC Board regional affiliate not named in the case, had sued under state law after a dispute between the two groups allegedly led to his ouster and harmed his reputation.

While the trial court declined the case, saying it didn't want to delve into religious matters, the appellate court found the case was a dispute between two separate groups, not an internal one.

The amici disagreed, with the professors calling the case an "intrachurch power struggle."

"That the minister's claims are framed under state tort law is of no moment," the professors wrote in their April brief. "The scope of the church autonomy doctrine encompasses torts that arise from the minister-church employment relationship."

The states added that the Fifth Circuit had mistakenly applied neutral principles in a way that "threatens to swallow the larger rule of church autonomy," saying the high court's failure to step in would result in different applications of the doctrine depending on venue.

Two Orthodox Jewish organizations expressed concern that the ruling would hinder collaboration among nonhierarchical religious groups. Another coalition of religious organizations added, "His tort suit is a stealth attack on the Baptist form of church government."

In his May reply brief rebutting the SBC Board and the amici, McRaney noted that he isn't challenging his firing.

He also said the Fifth Circuit's ruling was consistent with earlier decisions, adding that the court hadn't decided whether the SBC Board had a First Amendment defense but rather punted that question for a different day.

"While NAMB — and especially its amici — are eager for this court to refashion its religion clause jurisprudence, this is not the case to consider doing so," McRaney's brief said.

In a statement Monday, First Liberty Institute, which represents the SBC Board, said it was disappointed in the high court's decision.

"The First Amendment prohibits the government from interfering with the autonomy of religious organizations or the local church," said Jeremy Dys, special counsel for litigation and communications at the organization. "There should be no doubt that religious institutions — not judges — have the freedom to choose how to fulfill their religious missions and with whom."

Scott Gant, an attorney for McRaney, told Law360 on Monday that he and his co-counsel are "pleased the Supreme Court agreed with us that it should not accept the case for review, and look forward to resuming discovery in the district court."

The SBC Board is represented by Kelly Shackelford, Jeffrey Mateer, David Hacker, Hiram Sasser III and Stephanie Taub of First Liberty Institute; Kathleen Carrington, Donna Jacobs and Joshua Wiener of Butler Snow LLP; and by Matthew Martens, Kevin Gallagher, Matthew Vigeant, Douglas Gates, Paul Vanderslice and Kevin Palmer of WilmerHale.

McRaney is represented by W. Harvey Barton II of Barton Law Firm PLLC and Scott Gant of Boies Schiller Flexner LLP.

The case is The North American Mission Board of the Southern Baptist Convention Inc. v. McRaney, case number 20-1158, in the U.S. Supreme Court.

--Editing by Roy LeBlanc.