



7TH ANNUAL Religious Freedom Tournament

Hosted by: Notre Dame Law School on October 28–30, 2022

NOTE: This Fact Pattern is intended as a helpful resource for individuals considering participation in the Tournament and is thus subject to minor revisions. The complete finalized appellate record will be distributed to competitors upon registration, which will open the week of August 21st.

Fact Pattern

In 2010, facing comparatively low ratings for achievement in STEM, the State of Hoynes implemented a program called the “Broad Education Advancement Grant,” or “BEAG.” This program is administered by the Hoynes Department of Education and provides funding for technology and textbooks to non-public schools as long as those schools operate in accordance with state education regulations, including Hoynes’ non-discrimination statute. The non-discrimination statute bars discrimination in employment on the basis of race, age, sex, sexual orientation, gender identity, and religion. However, Hoynes exempts churches, religious orders, and their integrated auxiliaries, who are allowed to employ individuals “of a particular religion to perform work connected with the carrying on by that church, religious order, or integrated auxiliary of its religious activities.” Other employers may only discriminate based on these protected characteristics after submitting an application to the Hoynes Civil Rights Commission



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and demonstrating that such discrimination is motivated by a bona fide occupational qualification.

The State of Hoynes has historically placed great value on the separation of Church and State. Fearing intrusion upon this separation by recent Supreme Court cases *Espinoza v. Montana Department of Revenue* and *Carson v. Makin*, Hoynes adopted an amendment to the State Constitution providing that “the State shall ensure that no government funds granted directly to private organizations are diverted to explicitly religious activities.” This amendment was coined the “Bane Amendment,” named after the state legislator who introduced it.

St. Agatha’s High School is a private Catholic school in the State of Hoynes. Due to a longstanding dispute with the local Archbishop regarding the validity of the Latin Mass—the Board of St. Agatha’s refuses to affirm that this liturgy is a legitimate form of Catholic worship or to acquaint its students with the 1962 Roman Missal, which outlines the Latin Mass rubrics—the school is not affiliated with the Archdiocese of Hoynes. St. Agatha’s was incorporated under the Hoynes Nonprofit Corporation Law as an educational, rather than religious, corporation and its formal mission is to “foster the healthy physical, intellectual, and spiritual growth of young citizens guided by the teachings of Jesus Christ and the wisdom of the Catholic Church.”

Because it does not qualify as a church under the laws of Hoynes and the local Archbishop refuses to acknowledge the school as an integrated auxiliary, St. Agatha’s submitted an application to the Hoynes Civil Rights Commission in 2019 for an exemption from the non-



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discrimination statute. Although the Commission determined that St. Agatha’s possessed a bona fide occupational qualification for discriminating based on religion in the hiring and employment of theology teachers, ministers, and other similar employees, it simultaneously ruled that there was “no bona fide occupational qualification for teachers of entirely secular subjects, such as science and math, to be dogmatic observers of the school’s religious identity.”

Vanessa Benson is a science teacher at St. Agatha’s who has worked at the school for the past five years. The terms of her employment the St. Agatha’s require Ms. Benson to: Participate in the religious life of the school, including a daily faculty Rosary; attend weekly Mass in the school chapel alongside students; serve as a model of upstanding moral character; and not espouse anything contrary to the teachings of Jesus Christ and the Catholic Church in her classes. In addition, as a devout Catholic who attends daily Latin Mass at the Archdiocesan Cathedral, Ms. Benson often opened her classes with various prayers, which she would also teach to her students. Although the employment documents do not refer to St. Agatha faculty as “ministers,” the teachers attend an annual Mass at the beginning of each school year, where they receive a blessing and are exhorted to form their students into upright Catholic citizens of outstanding moral character. In the past, although the vast majority St. Agatha’s faculty and staff are Roman Catholic, the school has hired some individuals from other faith traditions, including a science teacher who is Russian Orthodox.



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Deeply saddened by Pope Francis' 2021 "Motu Proprio" that imposed restrictions on the Latin Mass and other traditionalist Catholic liturgies, Ms. Benson recently made several posts on the popular social networking platform "MyTruthlr" in which she argued for the spiritual primacy of the Latin Mass and rejected the authority of Pope Francis over the Catholic Church, claiming that his election was illegitimate. A school administrator, alerted by the ensuing discussion and controversy among the technologically adept student body, became aware of Ms. Benson's MyTruthlr posts, which were promptly brought to the attention of the St. Agatha Principal and Board. Ms. Benson was subsequently told that she needed to take down her posts promoting the Latin Mass and rejecting the legitimacy of the Pope in order to conform to St. Agatha's mission of upholding the Catholic faith as passed down through the institution of the Papacy. Ms. Benson refused and told the school that, while she is a strong Catholic, she no longer recognizes Pope Francis as the rightful head of the Church. She also informed the school that her views are her own, they do not make their way into her curriculum or classes, and every post she made on MyTruthlr was written and posted outside of school hours. Nevertheless, Benson's employment at St. Agatha's was terminated.

Ms. Benson filed a complaint with the Hoynes Civil Rights Commission to challenge her termination. She claimed that the termination violated the non-discrimination statute because she was fired on the basis of her religious beliefs even though her position as a science teacher did not fall into the exemption granted to St. Agatha's by the Commission. The Hoynes Civil Rights



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Commission conducted an investigation into Vanessa Benson’s employment with St. Agatha’s and ultimately determined that, since Ms. Benson did not qualify as a theology teacher, minister, or similar employee, her termination was not based on a bona fide occupational qualification and thus violated the non-discrimination statute. Pursuant to this finding and the Hoynes non-discrimination statute, the Commission fined St. Agatha’s \$10,000,000 in compensatory and punitive damages.

During its investigation, the Commission, based on evidence submitted by St. Agatha’s to establish Ms. Benson’s identity as a minister, discovered that the school science curriculum included religious elements, such as scientific tests on the Shroud of Turin and Eucharistic miracles, as well as theological objections to the theory of Evolution. Ms. Benson utilized technology provided by the state’s grant program during these lessons. The Commission forwarded its report to the Hoynes Department of Education and recommended that St. Agatha’s lose its funding due to its violation of the non-discrimination statute and the Bane Amendment prohibition against government resources being diverted to religious indoctrination. The Hoynes Department of Education agreed with the Commission’s findings and immediately discontinued funding from the program to St. Agatha’s, citing the nondiscrimination statute, Hoynes’ Bane Amendment, and the Establishment Clause of the First Amendment of the U.S. Constitution.

In response, St. Agatha’s launched two suits in the United States District Court for the District of Hoynes, which would eventually be consolidated for the case *St. Agatha’s High*



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School v. Hoynes. First, St. Agatha’s sued the Hoynes Civil Rights Commission to challenge its finding for Vanessa Benson, arguing that Benson qualified as a minister under the First Amendment’s ministerial exception and that, even if she was not, the state non-discrimination statute violated the First Amendment of the United States Constitution. Secondly, St. Agatha’s sued the Hoynes Department of Education claiming that the Bane Amendment violated the Free Exercise Clause of the First Amendment. St. Agatha’s requested declaratory and injunctive relief against the fine levied by the Hoynes Civil Rights Commission, and that the Court issue a further injunction directing Hoynes to grant St. Agatha’s access to the funding program. The State of Hoynes responded to the latter suit by arguing that requiring the state to directly fund religious activities would violate the Establishment Clause of the First Amendment.

The federal District Court determined that, although Vanessa Benson did not qualify as a minister, the Hoynes non-discrimination statute was not neutral and generally applicable and thus violated the Free Exercise Clause of the First Amendment. The District Court also concluded that the Bane Amendment violated the Free Exercise Clause, and that the Establishment Clause would not be violated by a state funding scheme where funds were diverted to religious activities through the independent action of third parties. Hoynes then appealed the case to the United States Court of Appeals for the 13th Circuit, which reversed and found that 1) Benson did not qualify as a minister, 2) the nondiscrimination statute was neutral and generally applicable thus satisfying the *Smith* standard, 3) the Bane Amendment did not



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violate the Free Exercise Clause, and 4) and St. Agatha’s request to compel the State of Hoynes to grant funds to St. Agatha’s under its program would violate the Establishment Clause by forcing Hoynes to subsidize religious activities. St. Agatha’s subsequently appealed the case to the United States Supreme Court, which granted cert on the following four issues:

1. Whether St. Agatha’s firing of Vanessa Benson falls under the ministerial exception of the First Amendment of the United States Constitution.
2. Whether, even if Vanessa Benson is not a “minister,” the Hoynes nondiscrimination law nonetheless violates the Free Exercise Clause of the First Amendment.
3. Whether excluding St. Agatha’s from a generally available government funding program on the basis of Hoynes’ Bane Amendment violates the Free Exercise Clause of the First Amendment.
4. Whether the Establishment Clause of the First Amendment is violated by a direct government funding scheme where funds are diverted to religious activities through the independent action of third parties.

The State of Hoynes has not passed a state law analogous to the Religious Freedom Restoration Act, but it has incorporated all federal First Amendment jurisprudence into state law.



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20th Amendment to the Constitution of Hoynes, (colloquially, “Bane Amendment”):

Recognizing the State of Hoynes’ longstanding commitment to the separation of Church and State, the State shall ensure that no government funds granted to private organizations, either through an indirect or direct funding program, are diverted to explicitly religious activities.

Hoynes Statutes Annotated § 7-6423 (Effective July 1, 1980); Preventing Undue

Discrimination in Employment:

- a. It shall be an unlawful employment practice, except where a bona fide occupational qualification exists and permission is granted by the Hoynes Civil Rights Commission, for any employer to discriminate against any individual because of race, age, sex, sexual orientation, gender identity, or religion.
- b. Churches, religious orders and their integrated auxiliaries are permitted to limit their employment to individuals of a particular religion to perform work connected with the carrying on by that church, religious order, or integrated auxiliary of its religious activities.
- c. Upon application, the Hoynes Civil Rights Commission may grant permission to discriminate based on the categories listed in (a) if the Commission determines that such discrimination is motivated by a bona fide occupational qualification.



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Hoynes Statutes Annotated § 18-2319 (Effective July 1, 2010); Creation of a Broad Education Advancement Grant Program:

- a. The Hoynes Department of Education shall grant non-public schools funding to purchase technology and textbooks for the teaching of courses in mathematics and the sciences;
- b. This grant shall be conditioned on school compliance with the education regulations adopted by the State of Hoynes and Hoynes Stat. Ann. § 18-2319.
- c. This program shall be administered through the Hoynes State Department of Education.