



Employment Law Note

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Washington State Supreme Court Takes on the Constitution – Again



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In another landmark decision, the Washington State Supreme Court issued a ruling on March 4, 2020, calling into question more than 70 years of legal precedent. The decision, *Woods v. Seattle's Union Gospel Mission*, marks the second time since November that the Court has pitted the State Constitution against decades-old legislation to arrive at a modern interpretation.

Background

The defendant in *Woods* was Seattle's Union Gospel Mission (SUGM), a Christian evangelical organization whose primary mission for many years has been to feed and offer shelter to Seattle's homeless population. In 1999, SUGM also began running a legal aid clinic known as Open Door Legal Services (ODLS) to help its constituents deal with their various legal issues and to facilitate SUGM's gospel work. The plaintiff began volunteering at ODLS as a law student, and in 2016 applied for full-time employment as a lawyer. As part of his application, he disclosed that he was in a same-sex relationship. SUGM informed him that its policy disqualified him from employment, as "it was contrary to biblical teaching for him to engage in a same-sex relationship." Woods filed suit, and interest groups from both ends of the spectrum piled on to file briefs supporting/opposing his case.

Unconstitutional Against the Individual

The Court began its analysis by recounting the history of Washington's Law Against Discrimination (WLAD). Originally enacted in 1949, and revised multiple times since then, the WLAD to this day exempts from the definition of "employer" any "religious or sectarian organization not organized for private profit." From there, the Court explored whether the religious exemption violated Washington State's Constitution. The Court ultimately concluded that the religious exemption was facially constitutional, but its application to Woods personally might be *unconstitutional*.

And You May Ask – How Did They Get There?

To reach its decision, the Court undertook a dense analysis of U.S. Supreme Court and Washington State Court precedent. Ultimately, it concluded that the religious exemption was constitutional to the extent it was based on the "ministerial exemption" outlined by the U.S. Supreme Court, which "protects the freedom of religious institutions to choose and remove ministers without governmental interference." From there, it analyzed whether Woods, as an attorney, would be "ministering" to SUGM's flock, or whether he would simply be providing secular legal services. The Court then punted the case back to the trial court to gather more facts and to determine whether Woods was a minister or just a lawyer.

Is This a Trend?

Although the *Woods* decision is of primary interest to religious and secular non-profits who seek to remain exempt from the WLAD, the implications are more far-reaching in light of the Court's November 2020 decision in *Martinez-Cuevas v. DeRuyter Bros. Dairy*. There, the Court declared that RCW 49.46.130(2)(g), the provision exempting agricultural workers from the overtime pay requirement set out in the Washington Minimum Wage Act, violated Washington State's Constitution, effectively turning decades of established legal precedent on its head. Both decisions were authored by Justice Barbara Madsen, but issued as *En Banc* decisions (meaning, a decision of the full Court). Both featured strong concurring and dissenting opinions, signifying a lack of unity in the Court's decision, notwithstanding the *En Banc* label.

Takeaways

Washington's elected judiciary has shown in recent decisions a willingness to overturn established precedent to achieve progressive results. In legal parlance, this is known as "judicial activism." Normally, judicial activism is balanced by the legislature, and in the case of elected jurists, the voters. Given the current social cry for change, however, it seems likely that the Court will continue its current approach to effecting change by re-interpreting precedent to fit its concept of the present.

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