Presented:
37th Annual Technology Law Conference

May 2024
Austin, Texas

Religion, Politics, and Work

Jason S. Boulette

Author contact information:
Jason S. Boulette
Tori B. Bell
Boulette Golden & Marin L.L.P.
Austin, TX 78746

jason@boulettegolden.com
tori@boulettegolden.com
512-732-8900

A CONFLICT OF RIGHTS: RELIGION AT WORK

In 2023, a unanimous Supreme Court overruled 46 years of case law regarding an employee's right to practice and an employer's obligation to accommodate religion under Title VII of the Civil Rights Act of 1964 ("Title VII"). *Groff v. DeJoy*, 600 U.S. 447, 468–70 (2023). Before turning to *Groff* and its impact, it is important to understand just how broad the concept of "religion" is under Title VII. Perhaps more so than any other characteristic protected by Title VII, the seemingly simple term invites a reader to impose their own understanding out of habit. Indeed, a careless reader might subconsciously assume the law principally has in mind *the reader's* religion, together with those with which the reader is loosely familiar and generally agrees.

I. What Is Religion?

A. From Theistic to Non-Theistic

In 1890, the judicial understanding of religion under the First Amendment was much tied to a belief in God. *Davis v. Beason*, 133 U.S. 333, 342 (1890) ("The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.").

By 1961, however, the Supreme Court had expanded its understanding of religion, at least for purposes of the First Amendment:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

Torasco v. Watkins, 367 U.S. 488, 495 (striking down Maryland requirement that an individual declare a belief in God to take office). Indeed, to drive the point home, the Supreme Court quoted James Iredell, delegate to the North Carolina Convention and an eventual Justice of the Supreme Court, in a footnote to the above:

> (I)t is objected that the people of America may, perhaps, choose representatives who have no religion at all, and that pagans and Mahometans may be admitted into offices. But how is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for?'

Id. at fn. 10.

B. Title VII and the UMTSA

In 1964, against the backdrop of *Torasco*, the drafters of Title VII made it unlawful for an employer to discriminate against an individual "because of such individual's … religion." Notably, the drafters of Title VII did not define the term "religion."

In 1965, the Supreme Court turned to the question of "religious training and belief" under the Universal Military Training and Service Act ("UMTSA"). *United States v. Seeger*, 380 U.S. 163 (1965). Originally passed in 1948 and renamed in 1953, the UMTSA exempted "from combatant training and service in the armed forces of the United States those persons who, by reason of their religious training and belief, are conscientiously opposed to participation in war in any form." *Id*. at 165. The UMTSA defined the operative "religious training and belief" as follows:

> [A]n individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but (not including) essentially political, sociological, or philosophical views or a merely personal moral code.

Id.

With *Torasco* (a Constitutional case) at their backs, Seeger, Jakobson, and Peter challenged the UMTSA (a statute) under the First Amendment's Establishment and Free Exercise Clauses (Constitutional provisions), arguing "the section does not exempt non-religious conscientious objectors" and "discriminates between different forms of religious expression." *Id*. All three petitioners were conscientious objectors to war, but their objections derived from different beliefs. Seeger "preferred to leave the question as to his belief in a Supreme Being open," but expressed "belief in and devotion to goodness and virtue for their own sakes" and stated he believed destroying human life would come at "tremendous spiritual price." Jakobson expressed a belief in a "Supreme Reality" akin to a "Supreme Being," although not in the traditional sense, while Peter believed in "some power manifest in nature which helps man in the ordering of his life in harmony with its demands. …" *Id*. 167-69.

In assessing whether these beliefs could form the basis for a "religious" exemption from service under the UMTSA, the Court focused on Congress's use of the term "Supreme Being":

> We have concluded that Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views. We believe that under this construction, the test of belief 'in a relation to a Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is 'in a relation to a Supreme Being' and the other is not. We have concluded that the beliefs of the objectors in these cases meet these criteria and, accordingly, we affirm the judgments in Nos. 50 [Seeger] and 51 [Jakobson] and reverse the judgment in No. 29 [Peter].

Id. at 165-66.

In 1967, two years after *Seeger*, the Equal Employment Opportunity Commission ("EEOC") issued regulations interpreting Title VII as protecting "religious needs," "religious beliefs," and "religious practices." 29 CFR § 1605.1 (1967). Much as Congress had done when passing Title VII, however, the EEOC declined to define what "religion" meant. *See id*.

Title search: Religion, Politics, and Work

Also available as part of the eCourse
2024 Technology Law eConference

First appeared as part of the conference materials for the
37th Annual Technology Law Conference session
"Legal Guardrails for Religion, and Politics and Tech Companies"