A TRUCE IN THE RELIGIOUS WARS

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Last month, a federal court in Texas celebrated a rare event in the long and contentious history of church-state relations in the United States. In a "prayer-in-public-schools" case, what the court celebrated was a landmark settlement agreement which the complaining students and the school district hammered out and agreed to in a voluntary mediation process. A copy of the settlement agreement appears in the very brief court opinion approving the agreement as a model for other school districts. The court opinion also expressed the court's gratitude to the parties for their heroic efforts in working together over a period of months on a compromised set of solutions. Judge Biery also noted that it "signifies a bright point in our nation's long and difficult effort to harmonize the competing interests written into the First Amendment." In an Appendix to his opinion, Judge Biery also provided an interesting summary of "our nation's long and difficult" struggles over First Amendment issues. The unusual significance of the opinion is that even with emotionally and politically charged First Amendment debates, reasonable compromises can be achieved by parties of good will.

Also recently, the United States Supreme Court in a 9 to 0 opinion brought some peace to a frequent First Amendment battleground, deciding when anti-discrimination employment laws apply or do not apply to religious employers. In that case, a teacher with a disability was fired from her position in a K through 8 private religious school. She said she was fired due to her disability. The employer said she was fired for her refusal to engage in an internal dispute resolution process rather than filing a civil.

lawsuit. The Supreme Court held that anti-discrimination laws cannot be enforced against religious employers where the employee qualifies as a "minister" in the religious organization. The majority and concurring opinions by Chief Justice Roberts and Justice Alito cited no less than seventeen Court of Appeals opinions in which the federal courts have had to decide whether the employee was or was not a church "minister." The Supreme Court held this particular teacher was a "minister" of the Lutheran church and the Court gave helpful guidance for resolving this issue with regard to other employees of religious organizations.. This opinion, and the 17 cases preceding it, demonstrate how difficult it can be to apply First Amendment principles to real-life situations, especially when there are legitimate competing religious and employment issues at stake.

Despite the promise of less litigation over religious battles offered by the preceding two opinions, an opinion issued last week by a federal court in the State of Washington shows that many such battles are just heating up, especially in cases brought and financed by The Becket Fund for Religious Liberty. After a 12-day trial, the court concluded that a state law governing pharmacists who are asked to dispense contraceptive products may not, on religious or moral grounds, refer the customer to another pharmacist. The court held that this law overly burdened the free exercise of religion. The major problem with this state statute was that it provided for a number of exceptions, all of which were nonreligious in nature, but did not offer any exception for pharmacists acting out of moral or religious convictions, as do most such statutes. Therefore, after 12 days of trial, the statute was found to be invalid under the First Amendment. This opinion makes clear that the long history of First Amendment court battles will continue for years into the future. See for example the Complaint recently

filed in federal court in Alabama by The Becket Fund challenging federal contraception regulations of health insurers.