

Are Catholic Colleges Catholic Enough?

It's not just Boeing that the National Labor Relations Board is picking on: For the second time this year, the NLRB has ruled against a Catholic college.



The Chicago office of the NLRB said that St. Xavier University had failed to demonstrate the "substantial religious character" necessary to qualify for exemption from federal labor law. As a result, adjunct professors in its employ will be allowed to organize, even though the school has argued that a faculty union would interfere with the school's autonomy as a religious institution by ceding "jurisdiction over important matters to a third party."

In January, the NLRB's New York office made the same determination about Manhattan College, a Christian Brothers institution, which has since appealed.

Both cases hinge on the Supreme Court's ruling in *NLRB v. The Catholic Bishop of Chicago, et al.* (1979), which found that the NLRB had violated the First Amendment's free exercise clause by requiring Catholic schools to comply with federal labor laws, thereby possibly interfering with religious decision-making. But that ruling didn't stop the NLRB from claiming authority over most Catholic colleges and universities by arguing that Catholic Bishop protects only "church-controlled" institutions that are "substantially religious," a phrase taken from Chief Justice Warren Burger's majority opinion in the case. Many of the nation's 224 Catholic colleges and universities are legally independent of the Catholic bishops or the religious orders that founded them.

So the NLRB has put itself in the position of judging schools' religious character, and it has concluded over the years that many Catholic institutions are inconsistent in their application of Catholic principles to teaching, course requirements, campus life and faculty hiring. It's a serious overreach by the government, though many Catholics would agree that colleges and universities often demonstrate inconsistent religious observation.

The erosion of religious identity in Catholic higher education over the past 50 years has been marked by theological dissent, hostility toward the bishops, and increasingly liberal campus-life arrangements such as co-ed dorms and lax visitation rules. These issues fueled the 2009 confrontation at Notre Dame, for example, when pro-life Catholics objected to the school honoring President Barack Obama. This year the U.S. bishops are engaged in a review of Catholic educators' compliance with church rules

for colleges and universities.

Colleges that have deliberately watered down their Catholic identity, in part to help themselves compete for government aid, now face church pressure to strengthen their religious identity. The choice for Catholic educators is increasingly clear: defend religious liberty and stand up for a strong Catholic identity—or give up the pretense.

Catholic educators are now awaiting the result of Manhattan College's appeal to the NLRB regulators in Washington. Their appeal relies heavily on an argument put forward in 1986 by future Supreme Court Justice Stephen Breyer. Writing for half the members of an evenly divided D.C. Circuit Court of Appeals, Judge Breyer argued that the NLRB had contravened the Catholic Bishop ruling by establishing a "substantial religious character" test to determine whether a college meets sectarian standards.

The D.C. Circuit has formally embraced Justice Breyer's reasoning twice over the past decade, instructing the NLRB to stop interfering with any college or university that "holds itself out to students, faculty and community as providing a religious educational environment." In ruling against St. Xavier University and Manhattan College, NLRB regional staff seem to have ignored that instruction.

Mr. Reilly, president of the Cardinal Newman Society, is author of "The NLRB's Assault on Religious Liberty," published by the society's Center for the Advancement of Catholic Higher Education.

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