

Lawyers fret over religious liberty erosion after Milton Catholic school ruling

BY **KARA BETTIS** | DECEMBER 21, 2015, 21:30 EST



Fontbonne Academy in Milton became the focus of a case that pit religious freedom against employment anti-discrimination law. (New Boston Post photo by Beth Treffeisen)

MILTON – Some religious liberty advocates are expressing concern about eroded religious freedom in Massachusetts after a state court judge [ruled](#) that an all-girls Catholic school in Milton violated state anti-discrimination law when it rescinded a job offer because the applicant had a same-sex spouse.

Fontbonne Academy, run by the Congregation of the Sisters of Saint Joseph of Boston, began the process of hiring Matthew Barrett as food services director in 2013, but quickly withdrew its job offer when Barrett listed his husband as an emergency contact. Barrett sued the school, claiming that it had discriminated against him in violation of [Massachusetts law](#), which prohibits discrimination on the basis of sexual orientation.

Fontbonne claimed it was entitled to an exemption, as the law lets religious organizations [take](#) “any action with respect to matters of employment. . . calculated by such organization to promote the religious principles for which it is established or maintained.” Because Catholic teaching forbids same-sex marriage, Fontbonne argued that employing a man in such a union would be incompatible with its mission.

But Norfolk Superior Court Judge Douglas Wilkins ruled Dec. 16 that Fontbonne doesn't qualify as a religious institution because it doesn't limit enrollment or employment to just Catholics. Fontbonne hires and admits people of all faiths.

Wilkins also noted that the exemption wouldn't apply anyway because the job at issue doesn't involve presenting church teachings.

Critics faulted the decision. The ruling represents "a radical disregard of traditional understanding of freedom in this country," C. J. Doyle, the executive director of the Catholic Action League of Massachusetts, said in an interview. Some observers [agree](#).

At least one Catholic legal scholar, however, said that Wilkins seems to have applied Massachusetts law correctly. Dwight Duncan, a professor at the University of Massachusetts Law School in Dartmouth who has written extensively on religious legal topics, said by email that the decision is "pretty solid, from a strictly legal point of view."

Duncan cautioned, however, that "there is no reason why anti-discrimination law should automatically trump the religious freedom of private entities." A key point is that the state exemption from such rules for religious organizations is relatively narrow, he said.

"Exemptions for religious employers from employment-discrimination law are broader under federal civil-rights law," Duncan explained.

Other legal advocates disagree with Wilkins.

The judge misapplied the state statute, producing a result "inconsistent with fundamental principles" of law, according to Gregory Baylor, senior counsel with Alliance Defending Freedom in Scottsdale, Arizona, and a religious-liberty consultant for the Council of Christian Colleges and Universities.

"Religious schools should be free to select employees who support their religious missions," Baylor said by email. "This ruling is particularly troubling for religious organizations in Massachusetts, as it may serve to undermine their freedom to maintain their religious character through their personnel decisions."

Ben Klein, a lawyer with Gay and Lesbian Advocates and Defenders, or GLAD, who represented Barrett, said in an interview that the decision was the first to reject a religious organization's exemption claim.

He added that many religious institutions have been trying to expand exemption provisions in a way that "would alter ... principles of anti-discrimination law."

Last week, the [Associated Press](#) reported that over the past two years, about three dozen Christian colleges and universities nationwide had requested extended exemptions from federal anti-discrimination laws in dealing with both students and employees.

See more at: <http://newbostonpost.com/2015/12/21/lawyers-fret-over-religious-liberty-implications-of-ruling-against-catholic-school/#sthash.23J9cAyg.dpuf>