Insight

IN-DEPTH DISCUSSION

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Claims to Accommodate Flying Spaghetti Monster-ism Hit the Wall in Nebraska Court

BY DARREN E. NADEL AND WILLIAM E. TRACHMAN

On April 12, 2016, a district court in Nebraska rejected the religious accommodation claims advanced by a member of the Church of the Flying Spaghetti Monster.[1] In denying the religious accommodation claims, the court was forced to walk a narrow line between precedents that bar courts from questioning the centrality of a belief to an individual's faith, and cases that allow courts to assess the religious nature of a plaintiff's beliefs. Because the plaintiff is an inmate and not an employee, this case does not involve reasonable accommodations under Title VII of the Civil Rights Act of 1964 ("Title VII"). But the court's evaluation of what makes a belief system a "religion" offers insight into how other courts may address this complex and sensitive issue. The decision also provides interesting reading.

Pirates, Pastafarians and Beer Volcanos

Stephen Cavanaugh is an inmate at the Nebraska State Penitentiary. He claims membership in the Church of Flying Spaghetti Monster ("FSMism"), whose adherents often refer to themselves as "Pastafarians." As such, the plaintiff claimed that he was entitled to, among other things, wear full pirate regalia while proselytizing to other prisoners, the right to "a seaworthy vessel," to treat Fridays as a holiday, and to wear a "Colander Of Goodness" on his head.[2] He brought suit against several prison officials for refusing to accommodate his religious beliefs. Unsurprisingly, the lawyers representing the prison officials moved to dismiss.

Cavanaugh was *pro se*, so the court treated his claims liberally, and even conducted independent research into the origin of FSMism and the "Gospel"

1 *Cavanaugh v. Bartelt*, 2016 U.S. Dist. LEXIS 48746 (D. Neb., Apr. 12, 2016).

2 *Cavanaugh*, 2016 U.S. Dist. LEXIS 48746, at * 17. Notably, other individuals have asserted the right to wear a colander on their heads while taking a driver's license photo. *See* Steve Annear, *Woman Allowed To Wear Spaghetti Strainer In Mass. License Photo*, Nov. 13, 2015 (Boston Globe), available at: https://www.bostonglobe.com/metro/2015/11/13/woman-allowed-wear-spaghetti-strainer-her-head-mass-license-photo/m8ADuh2oS2zk2jrc85o3FM/story.html.

of the Flying Spaghetti Monster. Cavanaugh brought his claims under the Free Exercise Clause and the Equal Protection Clause of the U.S. Constitution, as well as the Nebraska State Constitution. Additionally, the court treated the plaintiff's claims as arising under the Religious Land Use and Institutionalized Persons Act (RLUIPA).[3] That statute allows a prisoner to seek an exemption from prison rules in the case of a substantial burden on the exercise of his/her religion.

After a review of the Gospel and other sources, the court found that FSMism originated as a response to intelligent design theory, arguing that it is just as likely that God set the universe in motion as did a great Flying Spaghetti Monster.[4]

FSMism also has other humorous components that resemble religious practices and beliefs at first glance:

> There are those who love the worship service, which is conducted in Pirate-Speak and attended by congregants in dashing buccaneer garb. Still others are drawn to the Church's flimsy moral standards, religious holidays every Friday, and the fact that Pastafarian Heaven is way cooler. Does your Heaven have a Stripper Factory and a Beer Volcano? Intelligent Design has finally met its match—and it has nothing to do with apes or the Olive Garden of Eden.[5]

The court took judicial notice of FSMism's texts, since Cavanaugh referred to them in his Complaint and because the contents of the documents were capable of verification. The court viewed judicial notice of the FSM Gospel as "as effectively the same as taking judicial notice of the Bible."

How Much Can Courts Question Religious Beliefs?

Faced with the professed beliefs of a Pastafarian, what was the court to do? Courts are generally unwilling to question the importance or centrality of an individual's religious beliefs to their faith. Moreover, a court "must not presume to determine the plausibility of a religious claim." And while there is no prohibition against courts inquiring into whether an individual's beliefs are sincerely held, courts are often reluctant to do so.[6]

On the other hand, courts have expressed some willingness to question whether an individual's beliefs are of a "religious" nature. In *Cavanaugh*, for instance, the court purported to walk this careful line by stating that "an asserted belief might be so bizarre, so clearly non-religious in motivation, as not to be entitled to protection." As examples, the court cited to cases involving the "Church of Cognizance" and the "Church of Marijuana."

As the court acknowledged, this approach necessarily disadvantages unfamiliar or new religions with which judges lack experience or knowledge.[7] But this is simply a consequence, argued the court, of favoring "religious" beliefs over non-religious beliefs, as both RLUIPA and the Free Exercise Clause do. Thus, the court held that with respect to FSMism, prison officials could "appropriately question whether a prisoner's religiosity, asserted as the basis for a requested accommodation, is authentic."

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3 42 U.S.C. § 2000cc, et seq.

4 *Cavanaugh*, 2016 U.S. Dist. LEXIS 48746, at *6 ("Can I get a 'Ramen' from the congregation?! Behold the Church of the Flying Spaghetti Monster (FSM), today's fastest-growing carbohydrate-based religion. … (fact: Humans share 95 of their DNA with chimpanzees, but they share 99.9 percent with Pirates!).") (internal quotation marks omitted).

5 *Id.* at *7 (original emphasis).

6 *But see e.g., EEOC v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico,* 279 F.3d 49 (1st Cir. 2002) (union raised issues about sincerity of plaintiff's beliefs by pointing out inconsistent behavior).

7 *Cavanaugh*, 2016 U.S. Dist. LEXIS 48746, at *13 ("The Court is well-aware of the risks of such an endeavor: it might be too restrictive, and unduly exclusive of new religions that do not fit the criteria derived from known religious beliefs.")

What is a Religion?

Confronted with a plaintiff who purported to espouse sincerely held beliefs about a Flying Spaghetti Monster, the court had to offer a basic outline of what it means to have beliefs that are of a "religious" nature:

> First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.[8]

The court acknowledged, however, that FSMism presents unique challenges under existing jurisprudence. It noted that "propositions from existing case law are not particularly well-suited for such a situation, because they developed to address more ad hoc creeds, not a comprehensive but plainly satirical doctrine."

Citing other cases, the court described beliefs about "deep and imponderable" ideas that typically indicated religiosity: beliefs about (1) existential matters, like humankind's sense of being; (2) teleological matters, such as humankind's purpose in life; and (3) cosmological matters, such as humankind's place in the universe.

The court rejected the idea that FSMism is a religion because the beliefs associated with it fall outside of these realms. Instead, the court held that FSMism is simply "a satirical rejoinder to a certain strain of religious argument." Indeed, the court questioned the seriousness of the basic tenets of the Church's doctrine, holding that it would not take FSMism's "Gospel" in a literal fashion, when it was clearly meant to satirize other religious beliefs.[9] And while the court was quick to argue that it was not questioning the "validity" of the plaintiff's beliefs, this did not mean that it needed to treat FSMism as a genuine religion.[10]

RLUIPA and Substantial Burdens

The U.S. Supreme Court recently addressed religious burdens in the context of private employers and the Affordable Care Act's birth control mandate.[11] Like the Religious Freedom Restoration Act (RFRA) statute that is invoked as part of this discussion, RLUIPA protects certain religious beliefs that are affected by generally applicable laws. Specifically, RLUIPA provides that in a program that receives federal financial assistance:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution…even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.[12]

8 *Id.* at *15.

9 *Id.* at *17 ("But to read the FSM Gospel literally would be to misrepresent it—and, indeed, to do it a disservice in the process. That would present the FSM Gospel as precisely the sort of Fundamentalist dogma that it was meant to rebut.").

10 *Id.* at *17 ("It is no more tenable to read the FSM Gospel as proselytizing for supernatural spaghetti than to read Jonathan Swift's 'Modest Proposal' as advocating cannibalism.")

11 *See* Visconti, Nadel, and Trachman, *Supreme Court Rules in Favor of Hobby Lobby, Opens Door to Religious Objections to Statutes Covering Employers*, Littler Insight (July 7, 2014).

12 42 U.S.C. § 2000cc-1(a).

Strangely, the court in *Cavanaugh* addressed the question of "substantial burden" despite already having ruled that FSMism is not a religion. On the merits of the question, the court noted that denying Cavanaugh the right to wear pirate regalia and a colander on his head, among other things, might make it harder for Cavanaugh to practice FSMism, but determined that such burdens were not "substantial" ones. Cavanaugh, the court held, could still practice the fundamental tenets of FSMism, and he was not coerced into acting contrary to his beliefs.

Cavanaugh's poor pleading substantially affected the court's judgment on this question. The court held that although Cavanaugh might prefer to wear pirate garb and have other privileges, he had failed to explain why they were *necessary* to practice the "religion" of FSMism. It is unclear how the court would have ruled if the plaintiff had better articulated the reasons why religiously-mandated proselytizing required specific religious clothing.

What is the Relevance to Employment Issues?

In the wake of recent high-profile disputes over religious freedom in the contexts of birth control and LGBT rights, the likelihood is that employers will increasingly face challenges in responding to their employees' religious accommodation requests. Such claims may arise in the context of a federal or state RFRA statute, or under Title VII's religious accommodation provisions.

With respect to an RFRA claim, an individual may assert a religious objection to a neutral law. Under Title VII, employees may object on religious grounds to an employer's rules about scheduling, dress codes, or other relevant employee standards. As to these rules and standards, employers owe a duty to accommodate the religious practices of their employees, unless an accommodation would create an undue burden to the employer's business.[13]

In *Cavanaugh*, notably, it was individual prison officials—and not courts—who had to make the initial determination about whether or not Cavanaugh belonged to a "real" religion.[14] In other contexts, it will be employers and their counsel.

Like courts, employers should be cautious and thoughtful when questioning the merits of any particular religious accommodation claim, or trying to determine whether the employee's religious beliefs are sincerely held. However, employers should take a bit of comfort knowing that some courts may scrutinize employees' religious beliefs when evaluating accommodation requests.

Practical Considerations

In fiscal year 2015, individuals filed 3,502 charges of religious discrimination with the Equal Employment Opportunity Commission. Many of these claims allege an employer's failure to accommodate religious beliefs and practices.

While certainly not the norm, there are some employees who may demand religious accommodations to gain preferential treatment or parody religious accommodations generally. Determining which claims for

13 *See* 42 U.S.C. § 2000e-2(j) (accommodation not required if it would cause an "undue hardship on the conduct of the employer's business."); see also *TWA v. Hardison*, 432 U.S. 63, 74 (1977) ("The intent and effect of this definition was to make it an unlawful employment practice under § 703(a)(1) for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.").

14 *Cavanaugh*, 2016 U.S. Dist. LEXIS 48746, at *6 ("[P]rison officials determined that FSMism was a parody religion.").

accommodation are reasonable and legitimate can thus be a complicated endeavor. Employers should therefore consider:

- Developing a plan for dealing with religious accommodation requests.
- Consulting counsel when an employee asserts a need for a religious accommodation, particularly where the request relates to an unfamiliar religion or practice.
- Assessing, in coordination with counsel, the impact that an accommodation would have on their business.
- Continuing to monitor legal developments, including case law addressing specific factual circumstances.