REGENT UNIVERSITY | School of Law

July 14, 2020

Justice Sonia Sotomayor
Supreme Court of the United States
1 First St. NE
Washington D.C. 20543

Dear Justice Sotomayor:

In *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. __ (July 8, 2020), your dissenting opinion, joined by Justice Ginsburg, included this line (p. 20 of the slip opinion):

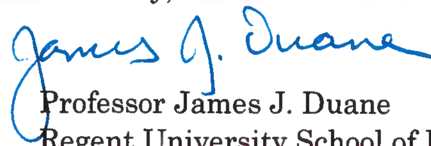
> *Little if nothing* appears left of the statutory exemptions after today's constitutional broadside.

It is obvious that you meant instead to write "little *or* nothing" or "little if *anything*" – two elegant ways of expressing the idea that "if there is anything at all, it will only be a little bit."

Like you, I do not regard myself as a slave to idiomatic linguistic convention, and I would not quarrel with any creative spirit who chose to break with tradition to coin some clever but coherent method of making her point.

But the novel phrase you have perhaps unintentionally created here makes no sense at all. What you wrote is a shorthand way of saying: "If *nothing* remains of those exemptions after today, it will only be a *little* bit." And that is absurd.

Sincerely,



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Cc: Hon. Ruth Bader Ginsburg

1986), pp. 11, 29, n. 17. It is hard to imagine a more concrete example than these cases.

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The Court's conclusion portends grave consequences. As the Government (arguing for Biel at the time) explained to the Ninth Circuit, "thousands of Catholic teachers" may lose employment-law protections because of today's outcome. Recording of Oral Arg. 25:15–25:30 in No. 17–55180 (July 11, 2018), https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000014022. Other sources tally over a hundred thousand secular teachers whose rights are at risk. See, *e.g.*, Brief for Virginia et al. as *Amici Curiae* 33, n. 25. And that says nothing of the rights of countless coaches, camp counselors, nurses, social-service workers, in-house lawyers, media-relations personnel, and many others who work for religious institutions. All these employees could be subject to discrimination for reasons completely irrelevant to their employers' religious tenets.

In expanding the ministerial exception far beyond its historic narrowness, the Court overrides Congress' carefully tailored exceptions for religious employers. Little if nothing appears left of the statutory exemptions after today's constitutional broadside. So long as the employer determines that an employee's "duties" are "vital" to "carrying out the mission of the church," *ante*, at 21–22, then today's laissez-faire analysis appears to allow that employer to make employment decisions because of a person's skin color, age, disability, sex, or any other protected trait for reasons having nothing to do with religion.

This sweeping result is profoundly unfair. The Court is not only wrong on the facts, but its error also risks upending antidiscrimination protections for many employees of religious entities. Recently, this Court has lamented a perceived "discrimination against religion." *E.g.*, *Espinoza* v. *Montana Dept. of Revenue*, *ante*, at 12. Yet here it swings