TWO ANTI-CHRISTIAN CASES BEFORE THE COURTS

Catholic League president Bill Donohue comments on two important religious liberty cases:

There are two religious liberty cases before the federal courts that have much in common: (a) both evince a clear animus against Christianity, and (b) they emanate from the most militantly secular states in the nation, Oregon and Washington.

The Oregon case will be appealed to the Supreme Court; the Washington case will be decided in the spring by the high court.

In 2013, the Court of Appeals in Oregon ruled that Aaron and Melissa Klein, who owned a bakeshop in Gresham, discriminated against a lesbian couple, Rachel and Laurel Bowman-Cryer, when they refused to make a wedding cake for them. The evangelical couple did so on religious grounds, citing Leviticus for support.

The lesbians filed a complaint with the Oregon Bureau of Labor and Industries. It said the Christians violated Oregon's accommodations statute barring discrimination based on sexual discrimination. The panel ordered them to pay $135,000 in damages. The bakery owners appealed to the Oregon Court of Appeals in 2016, but they lost again. Then they appealed to the U.S. Supreme Court.

In 2019, the high court vacated the ruling and sent it back to the state court of appeals for reconsideration. It cited its ruling in a similar case, *Masterpiece Cakeshop*, (which was decided favorably to the religious liberty side), for review.

On January 26, 2022, the Oregon appeals court told the Bureau

of Labor and Industries to reconsider its order fining the Christian couple. It said that the state agency “acted non-neutrally” against them. But it insisted that the couple was still guilty of discriminating against the lesbians.

Attorneys for First Liberty Institute, joined by former White House Counsel C. Boyden Gray, will appeal this ruling, arguing that the same agency that showed an anti-Christian bias should not be allowed to try this case one more time. They maintain that the appeals court should have put an end to this case once and for all.

The appeals court showed cowardice when it said the state agency “acted non-neutrally.” This sanitized term is a ruse: it would be more accurate to say that flagrantly anti-Christian remarks were voiced by some on the panel.

The lawyers for the Christians contended that the panel’s “administrative prosecutor disparaged” their client, labeling their objections a mere “excuse” for discrimination. They also unjustly compared their clients’ objections to cases involving “physical violence, prolonged sexual harassment, and religious coercion.” The bakery owners were even enjoined from “speaking about their religious beliefs, despite the lack of any basis for such a gag order.”

The Washington case involves a football coach, Joseph Kennedy, who huddled with players for a prayer on the 50-yard-line after games at Bremerton High School, outside of Seattle.

When he was asked by school officials not to lead the players in a prayer, he complied. When he decided to take a knee and say a silent prayer with the players, the school objected again, saying students could see him praying. Finally, the school banned prayer altogether.

The school said that if he wants to pray he should do so in a janitor’s closet or the press box; this way no one would construe his behavior to be a government-endorsed event. He

refused, citing his First Amendment rights. The school fired him.

Kennedy sued and twice lost before the Ninth Circuit Court of Appeals.

The Ninth Circuit ruled that public speech of "an overtly religious nature" is forbidden, arguing that doing so gives the impression that the government is endorsing religion. Kennedy's First Liberty attorneys charged that the Ninth Circuit was now saying that "even *private* religious speech by teachers and coaches violates the Establishment Clause (italic in the original)."

Kennedy appealed to the Supreme Court but the justices declined the case; they asked the lower courts to review it. Now the Supreme Court has decided to hear the latest appeal.

Jeremy Dys, the First Liberty attorney for Kennedy, argued that the Ninth Circuit ruling sets a dangerous precedent. It would call into question whether "a public-school employee has a constitutional right to engage in brief, quiet prayer *by himself* (his italic.)"

Furthermore, if this ruling were to stand, it would mean that a teacher who bowed his head before a meal in the school cafeteria, or wore a crucifix or yarmulke, could be fired for giving the appearance of government endorsement of religion.

Americans United for Separation of Church and State president Rachel Laser, who represents the school board, frames the issue in a patently dishonest way. "No child attending public school should have to pray to play school sports." She's right about that, but it is a red herring: No student is being compelled to pray as a condition of playing sports in any public school in the nation.

These two cases are driven by a hatred of Christianity, and that is why they have been banging around in the courts for so

long. The totalitarian left, which occupies a sizeable presence in Oregon and Washington (home to the crazed 2020 Portland and Seattle riots), must be stopped if liberty is to prevail.