

Statement by Kathleen Purcell
Assembly Judiciary Committee
Informational Hearing
“Workers’ Rights and Religious Employers after *Hosanna-Tabor*”
July 23, 2015

Good morning and thank you for this hearing. I am Kathleen Purcell. I am a high school teacher and a constitutional lawyer. I’d like to offer you a sense of what this all means on the ground and the human cost.

I came to teaching after many years of practicing law. From early on, my law practice has included a focus on anti-discrimination and the First Amendment, particularly freedom of speech and religion, as well as various other aspects of constitutional and public policy law.

I have been involved in high school teaching since 1989. I worked for 7 years at St. Ignatius High School here in SF during which I taught history and worked in the campus ministry department. I’ve also worked with the public schools. I know the difference between teaching and religious ministry. From 2008 until last year, I worked at Bishop O’Dowd High School in Oakland.

At O’Dowd, I created and ran an experiential program for students to explore college and career. I also developed and ran their international students program and I taught US history.

If I have one message for you as a teacher and a lawyer, it is this: The US bishops very much want to characterize what is at stake here as freedom of religion. It is not. These Catholic schools have entered the public square. They are not functioning as churches or religious enclaves or missionaries. They actively solicit the business of the public generally. They want all the benefits of being part of the larger society – social, political, economic -- but none of the responsibilities. Freedom of religion is not a broad license to

discriminate nor is it a right to abuse the trust and well-being of our children. That is what is at stake here.

Here is what happened in the Diocese of Oakland. As the 2013-14 school year was closing, the Bishop of Oakland announced that he was inserting into our employment contract new language. Under this new language our overarching commitment as teachers would supposedly be to promote the “doctrines, laws and norms of the Roman Catholic Church.” That was not in any way what my job had been for the previous 6 years nor what I knew other teachers – science, math, English, social studies, even religion teachers -- were in fact expected to do in their classrooms.

There was also new language that made it a condition of my employment that my personal life in all its aspects must “model and promote behavior in conformity with the teaching of the Roman Catholic faith in matters of faith and morals.”

The bishop’s action threw our school into an uproar. Teachers were deeply distressed and very afraid. The details of their personal lives were suddenly open to scrutiny and could be the basis for adverse employment actions, including firing. Due to my knowledge of constitutional law and the ministerial exception, I also realized that all of our employment and civil rights were at stake.

A little over two years ago one of my best friends died. I gave a eulogy that celebrated her 40 year relationship with her lesbian partner. That eulogy would be grounds for firing under the new contract. Putting a sign in my window against Prop 8, or supporting Barbara Boxer, Nancy Pelosi or a number of the members of this committee would potentially put me in violation of my contract because it could be read as support for positions inconsistent with “Catholic teaching.” (The bishop in Denver threatened to excommunicate and evict from their home a group of nuns who put an Obama

sign in their window. The SF Archbishop has said the mere membership in a political party is ok, but that being active in politics would depend, case by case.)

The O'Dowd students and their families were stunned and outraged that the school culture they knew and loved – a culture that explicitly valued diversity, acceptance, safety and critical thinking -- was under siege. They were worried about their teachers. They were worried about themselves.

You need to know that Bishop O'Dowd is a school where well over 25% of the student body and many of the faculty are not Catholic – they are Protestant, Buddhist, Jewish or no religion at all. This is true of many Catholic schools across the State, including those in the Archdiocese of SF. The promise that these schools make to non-Catholic families is that their children will NOT be targets for conversion to Catholicism. Even the religion classes, these families are told, will teach about Catholicism, not promote Catholicism to their children. Upper division religion classes are accredited by UC as if they were philosophy or history classes.

The promise that these schools make to LGBTQ students, to students with gay and lesbian parents, to students who are the product of in vitro fertilization, or families otherwise arguably out of step with Catholic norms is that their children will be safe; they will be treasured; they will be supported.

In a survey of the O'Dowd faculty and staff, only 4 employees were not concerned by the new language compared to 62 who expressed concern. Concerns included:

- Impact on our ability to support ALL of our students, including those who are non-Catholic or even non-religious, or who are gay/lesbian
- That the language is so broad it will be impossible to enforce fairly
- That a student or family with academic issues could use the new language against a teacher (e.g. attacking lifestyle or religion)

The Oakland bishop and school leaders attempted to quiet concerns with assurances that this was not a witch hunt. Nothing would really change. Ignore the legal language and trust them. Just sign the contract. The most the Bishop offered was that he would initiate a series of meetings in the following school year to evaluate the language and consider revisions.

I loved my job. I loved the O'Dowd community. I could not put my name to this language. I could not be complicit in an effort to strip employees of their privacy, their integrity and their civil rights. It was a cruel choice for me and especially for my colleagues with young families and mortgages who could not afford to lose their jobs and had no options. Ultimately, I crossed out the reprehensible language, signed and submitted the contract. The diocese said this was no contract. My employment was terminated.

Now let's turn to SF. Like his counterpart in Oakland, the SF Archbishop is trying to use the contract – in this case a union contract -- to create evidence that would support a claim of ministerial exception.

He also wants to rewrite the teachers' handbook. His first rendition included language that many of us would consider hate language stating that the schools "affirm and believe" that adultery, masturbation, any sexual relations outside of marriage, and homosexual relations are "gravely evil." Artificial-reproductive technology, contraception and abortion were described similarly.

Teachers, students, families and the larger SF community have responded to this assault on their schools with outrage and organization. 80% of the teachers at the 4 Archdiocesan high schools signed a statement that the handbook language is "harmful to our community and creates an atmosphere of mistrust and fear." They called for the Archbishop to back down.

The Archbishop has forged ahead with softer versions but no change in course. When specifically asked whether he would act against teachers for how they live their personal lives, the Archbishop responded that he would

have to consider each situation case-by-case. He says he wants teachers to be careful about what they say to students so they don't contradict his version of Catholic teaching. Think about what that means for a gay or lesbian student who is struggling with depression. What happens when that student goes to a teacher for support? What happens when an adult at the school refers to homosexuality as bestiality – and this has occurred in the past. What happens to the silent, vulnerable student when a classmate insists that gay families are disordered and gravely evil or that children born from in vitro fertilization are the product of sin, and the teacher is forbidden by contract and handbook to offer support. The situation created by these bishops certainly harms the teachers, but we must never lose sight of how it also harms our children.

I invite you to consider several aspects:

- The employment and civil rights of teachers and other school employees
- The privacy rights of teachers and other school employees
- The emotional abuse of our children, indeed some of our most vulnerable children
- Questions of fraud and manufacturing evidence
- Questions of false advertising and false promises to families
- Whether and where these institutions that demand a right to discriminate are being supported with taxpayer funds and public resources

What we have here is employers using a claim of freedom of religion as a sword, not a shield. They have taken a very limited exception and are trying to stretch it until someone – a legislature or a court – tells them to stop. And a lot of people are being hurt along the way. We ask our legislature to find appropriate ways to reinforce what should be obvious: Being a church affiliated organization is not a broad license to discriminate nor is it a right to abuse the trust and well-being of our children.