Welcome to Civil Discourse. This podcast will use government documents to illuminate the workings of the American Government and offer contexts around the effects of government agencies in your everyday life. Now your hosts, Nia Rodgers, Public Affairs Librarian and Dr. John Aughenbaugh, Political Science Professor.

N. Rodgers: Hey, Aughe.

J. Aughenbaugh: Good morning, Nia. How are you?

N. Rodgers: I'm good. How are you?

J. Aughenbaugh: I'm good. Thank you.

N. Rodgers: We're a little behind because The Supreme Court basically mic dropped about 4,000 cases in the last three weeks or so. Then now they've gone on vacation, and good for them. But I'd like to catch us up, if we could, on some of the bigger things that have been going on in the last little bit.

J. Aughenbaugh: Sure.

N. Rodgers: I know that they've taken a couple of cases that are in and around the ideas of religion and religious exceptions granted to religious institutions and that sort of thing. There are a couple of cases for that going on?

J. Aughenbaugh: Yeah. In a previous podcast episode, we went ahead and talked about the Montana tax subsidy case, the Espinoza case. There were two other cases on the court's docket in the most recently completed term that also deal with the Free Exercise Clause of the First Amendment. Again, for listeners, the First Amendment has two clauses that deal with religion. One that prohibits the establishment of a government religion. In some, for instance, nation states, there is a national religion.

N. Rodgers: The Vatican comes to mind.

J. Aughenbaugh: Vatican comes to mind. For the longest time in Great Britain, it was the Anglican Church.

N. Rodgers: In some Muslim countries, whichever form Sunni or Shia of Islam that you prescribe to is the state religion.

J. Aughenbaugh: It is the state religion. The second of the two religion clauses is the Free Exercise Clause. Again, the idea here was the government should not be able to prescribe how you exercise your religious beliefs if you have any.

N. Rodgers: Up until certain damage, human sacrifice cannot be part of your religion.

J. Aughenbaugh: In fact, that is the example, Nia, that I use in my constitutional law, civil rights, civil liberties class.

N. Rodgers: I got lucky on that one.

J. Aughenbaugh: No.

N. Rodgers: If you belong to the ancient Aztec or Inca religions where that's a huge part of what you do, then no, you can't practice that religion.

J. Aughenbaugh: Yeah. It's one of the examples I give to my students in regards to how none of our liberties in the Constitution are absolute. I'll go ahead and say it. For instance, you have the liberty to exercise your religious beliefs. But if your religious beliefs tell you to commit human sacrifice, that's going to run afoul of various laws that say murder is a criminal act.

N. Rodgers: I know that in less ridiculous questions, because that one's clear, is some of the religions where they don't believe in modern medical procedures, I know that the states have struggled with that and the federal government has struggled with that, when do you intervene as a matter of protecting children or protecting elderly from people who were not giving them medical care that the rest of the world proceeds to be proper because of their religious beliefs? That's where it gets into nuance because everything is nuance. Nothing is as simple as don't commit human sacrifice and we're done. There's other practices where it really is a murkier question of faith and of nuance than it would seem.

J. Aughenbaugh: A really good example of that is one of the Supreme Court decisions that was handed down at the end of the most recently completed term. The case that I'm referencing is entitled Little Sisters of the Poor versus Pennsylvania.

N. Rodgers: We have a Little Sisters of the Poor here in Richmond in case people were wondering.

J. Aughenbaugh: It is a non-profit organization that has, if you will, chapters across the country. In this case, the justices upheld a federal rule which exempted employers with religious or moral objections from providing contraceptive coverage to their employees under the Affordable Care Act.

N. Rodgers: I know we don't generally leap right into how we feel about something, but that one freaked me out a little bit. Because I understand that employers can say, "If you come to work here, we will not provide you with this because we don't believe that it's right. We believe that it's morally unacceptable too." I think the argument here is contravene the will of God over whether you get pregnant or not. That's the theory behind. It's not just a baseless objection. The objection is actually based in the religious idea that God sends children to you, that pregnancy is a matter of divine act.

J. Aughenbaugh: Yeah. There are a number of religious faiths who believe that any form of contraception is thwarting the will of God.

N. Rodgers: I get where they're coming from on that. But the other part of me is like, but there are people for whom a pregnancy is dangerous medically, and they don't want to have an abortion. They want to avoid the question altogether by not getting pregnant. When I read that, I thought that's so scary.

J. Aughenbaugh: What you're touching upon is one of those classic competing imperatives that the courts are forced to go ahead and somehow craft a solution to. All of this originated with the Affordable Care Act, which was passed by Congress in 2010 and which was implemented in 2012. Again, for listeners, it's also known as Obamacare. Nia and I have joked about how sometimes we should not overestimate the knowledge of the typical American voter because, in 2016, a whole bunch of people who voted in that election did not know that the Affordable Care Act was the same thing as Obamacare.

N. Rodgers: Yeah. They were against Obamacare and for the Affordable Care Act, which I hate to tell you is the exact same thing.

J. Aughenbaugh: Same thing. But nevertheless, that kind of confusion sometimes does exist. Now, the Affordable Care Act had explicit language which would require employers to cover a wide array of female reproductive services but did not specify those reproductive services.

N. Rodgers: Of course, not.

J. Aughenbaugh: That was left to the executive branch to flush out. The Obama administration, particularly the Department of Health and Human Services, implemented rules that said one of the requirements to cover a wide array of female reproductive services was contraception. In other words, employers, if they offered health insurance to their employees, would have to cover contraception for typically female employees. Because it is not like most employers are providing condoms for their male employees.

N. Rodgers: Although one could argue that if you require one, you should require both. That's a different question which wasn't solved in this case.

J. Aughenbaugh: Yes, that's right.

N. Rodgers: We can do that one some other time.

J. Aughenbaugh: Yeah. There's a whole bunch of lawyers who might be listening and are like, "Hey, wait a minute."

N. Rodgers: "Hey, that's a class action waiting to happen."

J. Aughenbaugh: Yeah. This regulation exempted houses of worship: churches, temples, mosques. But non-profit groups that are affiliated with religious organizations like schools, like hospitals, like the Little Sisters of the Poor were not. Some of these groups argued that providing coverage for any approved form of contraception violated their religious beliefs. Now, in a previous case in 2016, the Supreme

Court had an opportunity to rule on the Obama administration making a distinction between exempting churches, and mosques, and synagogues versus other organizations like schools and hospitals associated with religious groups. But the court was split four to four. The name of the case is Zubic versus Burwell.

N. Rodgers: They were four to four because Scalia had passed away at that point.

J. Aughenbaugh: Yeah, that's right.

N. Rodgers: His seat had not yet been filled.

J. Aughenbaugh: That's right. So the Court split four to four. Usually when the court splits, they'll go ahead and say, the lower court ruling is affirmed, but in this particular case, there was an authored opinion, meaning that it was the opinion of the court, per curiam, right? They went ahead and instructed the parties to come to some agreement, while they didn't, Trump wins the election in 2016, and he comes in and says, "Well, I'm going to expand the number of religious organizations who are exempted, to include, hospitals, schools, and non-profit organizations like Little Sisters of the Poor."

N. Rodgers: Which is pretty clever at chipping away at the Affordable Care Act.

J. Aughenbaugh: Sure.

N. Rodgers: One of the things that I know that was plank of President Trump's was to wholesale be rid of the Affordable Care Act, and that has proven to be very difficult to do, and so if you can chip away at various parts of it, you might be able to eventually-

J. Aughenbaugh: Well, make it null and void, negate.

N. Rodgers: Right.

J. Aughenbaugh: But it also flows from something we've discussed in this podcast Nia, which is Congress to get agreement to pass laws will frequently write vague ambiguous laws, and then basically leave the implementation of those laws to whom?

N. Rodgers: The Executive branch.

J. Aughenbaugh: That's right.

N. Rodgers: Through agencies.

J. Aughenbaugh: That's right.

N. Rodgers: It's not just like they're saying to Donald Trump, "Go ahead. " because they would never do that. But they leave it to the agencies that implement those portions of things.

J. Aughenbaugh: The agencies' leadership changes with presidential administrations.

N. Rodgers: Right.

J. Aughenbaugh: You get it? That's one of the fundamental tenants of the modern administrative state. Okay?

N. Rodgers: It didn't use to be like that though, right? It used to be that people could stay in a position over more than one president.

J. Aughenbaugh: That is true. But again, change in policy emphasis has been a fundamental tenant of the modern administrative state.

N. Rodgers: Right.

J. Aughenbaugh: So a classic example which led to a Supreme Court ruling, of course, it did. Is the case of Chevron versus Natural Resources Defense Council in 1984. The Carter administration interpreted one section of the Environmental Protection Agency authorizing statute one-way. Reagan gets elected in 1980, defeating Jimmy Carter. He interprets it a different way. Okay? Environmental groups didn't like it. They went to the Supreme Court and the Supreme Court said, while the law was written in a vague, ambiguous way, and thus federal court should defer to the judgment of reason decision-making within the Executive branch.

N. Rodgers: Wait, this is our capricious and arbitrary.

J. Aughenbaugh: Arbitrary and capricious state.

N. Rodgers: Arbitrary phrasing where you can't just do it because you just feel like it there needs to be a reason for the argument.

J. Aughenbaugh: That's right.

N. Rodgers: So where does that, sorry.

J. Aughenbaugh: Well, no, and this actually touches upon how the Supreme Court decided the Little Sisters case.

N. Rodgers: Okay.

J. Aughenbaugh: Okay? So Trump comes in, actually follows the APA, the Administrative Procedures Act.

N. Rodgers: We're not trying to be ugly here to President Trump so if he listens to this podcast. We're not trying to be mean, but your guys on a regular basis do not follow the APA. If they did, you would get more stuff done.

J. Aughenbaugh: That's right.

N. Rodgers: Because it's very clear how it's supposed to work.

J. Aughenbaugh: That's right. They actually followed the APA and a majority of the court in the Little Sisters case said, because the law was vague and left it to the Executive branch to decide how the contraception regulation should be decided, okay? More generally, what is meant by female reproductive services. Then what the Trump administration did was legal. It followed the APA. Okay?

N. Rodgers: Well, yeah. So the two who dissented, they weren't dissenting based on that, right? They were dissenting based on something else.

J. Aughenbaugh: Now, the dissenters basically went ahead and argued that allowing the Trump Administration to do this would hurt the purpose of the Affordable Care Act as it relates to female reproductive services, and that was the point that Ginsburg made. Ginsburg's dissenting opinion actually made reference to something that even the government's brief, the Trump administration's written brief in this case discussed. Which is that anywhere from 70-125,000 women may lose birth control cost coverage with the ruling and the exception created by the Trump administration. That is a large number of people, Nia, female employees who are now going to have to find if you will, coverage for contraception from different sources. Okay? By the way, the other litigant in this case was the state of Pennsylvania. Pennsylvania's argument was, if these female employees are no longer covered by their employers because of a religious exemption because they reside in Pennsylvania, Pennsylvania will have to go ahead and cover the cost of their contraception.

N. Rodgers: So what gave them standing was that it was going to cost them money?

J. Aughenbaugh: That's right. Now, that's the APA. What was surprising to me was that the court majority relied upon APA instead of on another federal law, known as the Religious Freedom Restoration Act. The Religious Freedom Restoration Act was passed in the early '90's after the Supreme Court in the case of Employment Division versus Smith, said that an otherwise generally applicable law does not violate the civil liberties of religious groups as protected by the First Amendment. So real brief in Employment Division versus Smith. Smith was a drug rehab counselor working in the state of Oregon, and he gets fired from his job because he failed a drug test.

N. Rodgers: That makes me sad. I was worried you were going to say something like that. When you were like he got fired. Oh, no, not for it. Yes. Okay.

J. Aughenbaugh: Okay? Generally, drug rehab facilities basically want their counselors to be drug free, right?

N. Rodgers: Clean, right.

J. Aughenbaugh: Smith filed an unemployment claim in the state of Oregon, but it was denied. Okay? Because Oregon like many states do not give you unemployment if you're fired for cause.

N. Rodgers: Got you.

J. Aughenbaugh: If you're just generally laid off, not because you did something wrong, you can file for unemployment, and you usually get it. But according to the state of Oregon, he got fired for cause, and therefore he didn't deserve unemployment. Smith argued, his denial of unemployment benefits was based on his exercise of his religious beliefs, because he belonged to a native American religion that proscribed the consumption of peyote, which is the reason why he failed his drug tests.

N. Rodgers: It was peyote in his System?

J. Aughenbaugh: That's right.

N. Rodgers: So that's legit.

J. Aughenbaugh: It goes to the supreme court and the court in a majority opinion written by Justice Scalia said, wait a minute here, the state of Oregon's denial of unemployment benefits based on cause affects all religions. You could be fired for engaging in any religious practice if it violated the terms of your employment contract.

N. Rodgers: I get up and leave my job at my phone call center to pray five times.

J. Aughenbaugh: That's right.

N. Rodgers: I'm not making phone calls or answering phone calls, which is what my job requires. They fire me for what they say is cause. I say, I am required to pray at least three times while I'm at work, because of the way the prayers fall. They're saying firing for just cause is the problem?

J. Aughenbaugh: Otherwise, it's applicable no matter what your religious beliefs are. It's not like he was being singled out because you belong to a native American religion that had a particular practice, this so upsets Congress. By the way, this was co-sponsored by both Republicans and Democrats. It was signed into law by president Clinton, Past Religious Freedom Restoration Act, and basically what it said was, any government policy that creates an undue burden on a religion must be reviewed by the courts with strict scrutiny.

N. Rodgers: As we've talked about before, that's a tough.

J. Aughenbaugh: That's a tough standard to satisfy.

N. Rodgers: Yeah. It's got to meet the most rigorous standard that we have, which is going to affect people's practice of their religion. That's interesting because now the state is protecting religion while

we live under the first amendment, which says we shall not have a state religion. Basically what the state is having is all religions.

J. Aughenbaugh: That's right.

N. Rodgers: Which I guess, if you're not discriminatory, and it applies to all of them.

J. Aughenbaugh: Religions, that's right.

N. Rodgers: Then you're not picking a state religion.

J. Aughenbaugh: For many commentators, the fact that the five conservatives could agree in the majority opinion, by the way was written I believe by John Roberts. Roberts went ahead and focused on APA, which completely avoided the Religious Freedom Restoration Act. Which for many supporters of the contraception coverage of the Affordable Care Act, they breathe the sigh of relief, because the Religious Freedom Restoration Act would have been much harder to change in the future. So let's just say for instance, this fall, Joe Biden wins the presidential election, and he wants to go ahead and tighten the exception or the exemption for religious groups in regards to providing contraception coverage for their employees. It's far easier to do with APA because with APA again, all you have to do is go through the process and show that you had reasoned decision making and your new regulation goes into effect. But the Religious Freedom Restoration Act requires you to show as the government, you are not burdening a religion that is far more difficult than APA's noticing comment in formal rule making. But nevertheless, it's a huge decision.

N. Rodgers: Well, it's going to affect a lot of families. It also opens the door to more organizations falling under that umbrella if the president chooses to put them under there. If a president, not this president, but any president, chooses to put them under there. Now, I'm even more scared. Thanks. Appreciate that. I wasn't scared enough.

J. Aughenbaugh: Glad to be of service Nia.

N. Rodgers: There are days, when I think, you're a jerk. Not usually, but anyway what worries me, I think is the phrasing moral objection. You know what I mean? That's so ambiguous. I have lots of moral objections to lots of things. I have moral objections to chocolate covered crickets, and yet I know professors in entomology who eat them, that's a scary phrase to me at all, that's all I'm saying. It's just a scary phrase to me. It scares me that we are still having discussions about the possibility of denying people reproductive health care, male and female. We kid about condoms but that also applies under this rule. It applies to if that were to become an issue, I don't know.

J. Aughenbaugh: But to put this in context, and I'm going to upset you even more Nia.

N. Rodgers: Good. I'm glad I'm sitting down.

J. Aughenbaugh: Priored in 1965, when the Supreme Court went ahead and said in the Griswold versus Connecticut case that married couples had a constitutional right to receive, use, buy contraception, most of the time, the federal courts avoided cases where states prohibited the discussion, sale, distribution in usage of contraception. This idea that human beings, married couples or otherwise, could even receive information from their doctors about contraception violated, according to one study, 40 different state laws.

N. Rodgers: See, that's just bonkers. Your doctor should be able to talk to you about everything that has to do with your health. With no holds barred, that's the point of having a doctor. Otherwise, why not just rattle some bones, grid some tea leaves, and call it done?

J. Aughenbaugh: But there are a whole bunch of Americans who actually say, that's how we should do medicine in this country.

N. Rodgers: They should be drummed out and sent to a place where medicine is not a science. Well, I know, people say it's as much as art, and it is a science in the sense that we're constantly learning. But there is stuff we scientifically know, we also know that there have been a lot of studies that have shown that people who are able to control the number of offspring that they have, it changes their life standards, and the life standards of their children. Each generation is successfully better off the more they're able to control their reproductive health.

J. Aughenbaugh: That's something that Ginsburg pointed out in her dissent. She said that this exemption for religious organizations, beyond churches, synagogues, and mosques etc., was going to harm the economic and lifestyle, if you will, choices of a whole bunch of women.

N. Rodgers: And thus their families, not just single women. A lot of these women are married, and they're trying not to have 10 kids or whatever for a variety of reasons. So fie, fie upon this I say. But we also have another one and it's confusing to me because I'm not sure I understand exactly what that one's about.

J. Aughenbaugh: Yes. The other case you're talking about is actually two consolidated cases. But it goes typically by the name of the first case, Our Lady of Guadalupe School versus Morrissey Berru. These two cases basically asked the court the extent to which religious organizations as employers can fire employees and not be bound by existing federal laws that prohibit certain discrimination in the workplace. What's at issue here is a concept that the court created related to the free exercise clause of the first amendment. It's known as the ministerial exception. The ministerial exception basically is this. Religious organizations should be able to go ahead and decide who represents them at church services, in their schools, etc, per their religious beliefs. If the government is telling them who they can and cannot hire or fire, it would seem, at least according to the Supreme Court, to infringe upon the free exercise of religion. But this runs counter to a number of, if you will, civil rights laws. For instance, the 1964 Civil Rights Act prohibits employers from using various, If you will, characteristics as reasons to fire people. You can't fire people simply because of their race or their ethnicity, or national origin, or their sex.

N. Rodgers: We're back to that again.

J. Aughenbaugh: We're back to the Bostock Ruling. But there's another very important civil rights law which has bearing, and that is the Americans with Disabilities Act, which was passed in the early 1990s. It was signed into law by Bush 41, the first President Bush, which basically says you can't fire people simply because of their disability, amongst other provisions of the law. Now, in these two cases, in the one case you had a female school teacher in a religious school who was fired and then in the other case, you had a female teacher who had cancer and could no longer come to work and perform her duties. Both of them were fired. Both of them went ahead and claimed, if you will, protection by the civil rights laws that I just mentioned. Both religious schools went ahead and said that because they were engaged in impart, religious instruction, they were covered by the ministerial exception to the civil rights laws and the court in a '72 decision agreed with the schools.

N. Rodgers: I have such huge problems with that.

J. Aughenbaugh: I know you do.

N. Rodgers: I don't think you should be able to fire people because they have cancer. I don't think you should be able to fire people because they are women. I don't care who you are as an employer. I think the rules should apply. I understand from the school's point of view, let's just say that you worked at a religious school and you decided to transition or not decided to transition because I don't know if it's a decision so much as it is an awareness, but you transitioned to a female facing persona. That would be complicated for a lot of religions who believed that is wrong to have you in the classroom. I can understand where they might have to find different employment for you. I'm struggling to find a way around because it just feels so discriminatory to me. But I could understand where they might say, we can't have you in the classroom, but we're going to move you to this administrative position where you will do accounting or you'll do whatever and we don't have to explain to students why we have a teacher in the classroom teaching when we don't believe that they are religiously in line with our beliefs. There was a part of me that understands that and then there's another part of me that's like, yeah, but as a group, you guys get enormous concessions from the government. There's enormous leeway in religious organizations, tax wise, all these other things, and we're coming back to Espinoza, which we agreed to be gentle in our disagreement on, which is the way you should always disagree with people. I think we did that properly, but I think that there's some real questions in my mind about whether we should allow that. It is not the fault of a person that they get cancer.

J. Aughenbaugh: Fair enough. But does that mean you have a legal right at particular jobs?

N. Rodgers: I suppose not. I suppose that there is no legal right to hold. See, you always do this to me.

J. Aughenbaugh: Nia, I don't know the answer.

N. Rodgers: Yeah. It's complicated.

J. Aughenbaugh: Again, much like you, I don't think it's right for any employer to go ahead and say to somebody, because of your gender, we're going to fire you but we're not going to fire somebody else because of their gender. If you're doing the job, you are doing the job and in my mind it shouldn't matter. On the other hand, when you take a job working for a religious school, you have to know that if you're unwilling to go ahead and satisfy their requirements in regards to providing religious instruction, then you probably shouldn't take the job.

N. Rodgers: That's fair. I don't suppose that as an atheist, you would expect to be able to get a job in a Jesuit seminary. They would say when you came in to apply for the job, it would be unreasonable.

J. Aughenbaugh: In that situation, for instance, you and I work for a state agency and we understand quite well that the state, as an employer, is going to ask us to do certain kinds of thing. If you will extol certain virtues or values, that if we worked out of private university, for instance, they don't necessarily have to comply with the First Amendment, or other amendments. They are free as a private institution to pick and choose which ones they want to follow. In off-air, you and I have lamented that at times.

N. Rodgers: Yeah, that's a good point. I guess I'm coming at it for I have only ever worked in public institutions. I've only ever worked in institutions of higher education except for a brief time. Well, anyway, I can see where I'm probably biased because public institutions are so cautious about the reasons you fire people and they give you a long time to fix it. There are reviews and there's a process, and then there's a grievance process because we want to make sure we're not just randomly firing people because of something as arbitrary as their skin color or their sex or whatever. I guess part of me is like, "The world should run that way." Then I get reminded occasionally that out in the big bad world where not all organizations act in that way and I work in a right-to-work state. In Virginia, I suppose, I got a contract this year, but I guess next year they could just say no contract for you and that would be the end of that, and I wouldn't have much in the way of most of that.

J. Aughenbaugh: Unless you could go ahead and demonstrate that the reason why you're not receiving a contract, God forbid.

N. Rodgers: Is protected class something.

J. Aughenbaugh: In one of the civil rights laws, my contract is much like yours, Nia. I just received it, just signed it. But there's all kinds of qualifying language in that contract that said because of budgetary constraints or whatever the case may be, you could be terminated, no matter how well I do my job. So unless I could go ahead and point to something protected in the 1964 Civil Rights Act, for instance, or the Americans with Disabilities Act, or any other number of civil rights laws, I don't have recourse. What if tomorrow Nia, I went ahead and said, the centuries of political science research is basically bunk and I'm going to teach it from a a-historical, a-scientific perspective. I imagine my department's going to go ahead and say, "Aughie, that just doesn't cut it."

N. Rodgers: Right.

N. Rodgers: I will give kudos to your department. The first thing they would try to do is reason with you, right?

J. Aughenbaugh: Yeah. They would. Yes.

N. Rodgers: They would sit you down like an intervention thing and they would say, Aughe, tell us why you feel like you should be teaching this way. Because they wouldn't just immediately throw you up against the wall. They would give you a chance to explain first, because that's what academia does. But well, sometimes it does and sometimes it doesn't, sometimes we act out poorly as well.

J. Aughenbaugh: But we have competing imperatives, right?

N. Rodgers: Right.

J. Aughenbaugh: I tell my students this with some regularity. The Free Exercise Clause of the First Amendment. There's no glossary to the US Constitution that goes ahead and says, "This is what the Free Exercise Clause means." So many of these cases are trying to go ahead and figure out, how do we bridge those competing imperatives? How on one hand, can we go ahead and create a workplace that is free of discrimination? By the way, not for nothing, the 1964 Civil Rights Act, says, you can't discriminate in employment decisions based on religion. So it's written into the law. But at the same time, do we want the government telling churches and other religious organizations who they should hire in these positions, where they are teaching the faith of the particular religion?

N. Rodgers: Well, the Civil Rights Acts protects individuals from discrimination against religions. But they don't say anything about organizations discriminating based on religion.

J. Aughenbaugh: That's right.

N. Rodgers: The courts have found, it sounds on a pretty regular basis that religious organizations can discriminate based on their religious, they can discriminate against others.

J. Aughenbaugh: Yes. As long as the position in question is related to what we would think a minister would do, which is the teaching of the faith.

N. Rodgers: Which brings up an interesting question to me and I know we only have a couple of minutes, so I'll be brief. So if one of those people had not been teaching, if one of those people had been the accountant for the school, do you think that they would have had better standing?

J. Aughenbaugh: I think they would have had a better shot, Nia, of showing that the religion did violate the federal law.

N. Rodgers: So it's a matter of communication of the faith. If you're not directly communicating the faith to other people.

J. Aughenbaugh: That's right.

N. Rodgers: If what you're doing is filing or the accounting, or the janitorial services, then they would have a tougher time?

J. Aughenbaugh: Yes.

N. Rodgers: Okay. That makes me feel slightly better, it is not just a wholesale…

J. Aughenbaugh: In Justice Sam Alito's majority opinion, he goes to great lengths to explain, it's what the position does, it's not the title of the position. Because both plaintiffs went ahead and argued, ''I'm not a minister.''

N. Rodgers: He was saying, "Yes, but what you're doing is communicating the faith."

J. Aughenbaugh: That's right. Okay.

N. Rodgers: Okay.

J. Aughenbaugh: But if you're a janitor, how much faith communication are you engaged in?

N. Rodgers: Yeah. It's probably between you and God, but there's probably not much more communication going on than that as far as external.

J. Aughenbaugh: You don't have young minds at your disposal when you're going ahead and cleaning up after them at four o'clock in the afternoon.

N. Rodgers: Not so much with that. Although Lynyrd Skynyrd isn’t the name of the janitor at their high school or maybe you live in infamy in some ways.

J. Aughenbaugh: Maybe. Hey, if somebody who used to be a janitor, there wasn't very much communication of any idea being expressed when I was cleaning up after everybody.

N. Rodgers: You go now. Okay.

J. Aughenbaugh: Okay.

N. Rodgers: I think the rest of our cases aren't based in religious stuff.

J. Aughenbaugh: No, there were three major ones this term and we've already covered them.

N. Rodgers: So we'll get to something else next time?

J. Aughenbaugh: Yes.

N. Rodgers: All right. Thank you.

J. Aughenbaugh: Thank you, Nia.

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