

WALS

Lawyers Now



Chair's Message | *Teresa Schiller*

Dear Women and the Law Section Members:

Many section members are racing at breakneck speed to accomplish end-of-year tasks. Take a minute and consider how much you've *already* accomplished this year. You're amazing! We're proud of you! Here are articles designed to inspire, educate, honor, hear from, and support you.

Power Lunch Business Development Workshops (next one Dec. 8)

Free CLE HIPAA During a Pandemic (Dec. 9) &
CLE Video Library

Skills Savvy Tips for Conducting a Stellar Board Meeting &
So You Wanna Run for Office?

Legal Mojo Supreme Court Commentary: *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*

Competition Texas Law Student Writing Competition

Squad Section Leaders

Sincerely,
Teresa Schiller, Chair
State Bar of Texas Women and the Law Section



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Legal Mojo | *Supreme Court Commentary: Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*

Lauren Fielder*

On July 8, 2020, in a 7-2 decision, the U.S. Supreme Court in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*¹ held that the U.S. Departments of Health and Human Services, Labor, and the Treasury “had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections.”²

The Affordable Care Act (ACA), created by the Obama administration in 2010, includes a provision that requires covered employers to provide women with preventive care and screenings without any cost sharing requirements.³ The ACA does not specify what preventative care screenings entail and relies on the Health Resources and Services Administration (the “HRSA”), a division of the U.S. Department of Health & Human Services, to make this determination. The HRSA created Women’s Preventive Services Guidelines (“Guidelines”) in 2011, requiring health plans to provide coverage for all U.S. Food and Drug Administration-approved contraceptive methods.

This mandate quickly became controversial because religious organizations and businesses claimed that the requirement to provide contraceptives infringed on their right to the free exercise of religion. The HRSA responded by creating what is known as the church exemption, which exempts a church or an integrated auxiliary, a convention or association of churches, or “the exclusively religious activities of any order” from the application of the requirement.⁴ The HRSA issued guidelines in 2013, known as the “self-certification accommodation,” that expanded the exemption for eligible religious organizations.⁵

Several religious organizations challenged the self-certification accommodation, including the Little Sisters of the Poor (“Little Sisters”). Little Sisters is a group of Catholic nuns whose mission is to take care of the elderly poor. They claimed that completing the self-certification form would be an action that would “cause others to provide contraception or appear to participate in the Departments’ delivery scheme,”⁶ and claimed that the requirement to provide contraceptives or participate in the self-certification accommodation plan was a violation of the Religious Freedom Restoration Act of 1993 (RFRA).⁷

Little Sisters was not the only group that challenged the Guidelines under the RFRA. *Burwell v. Hobby Lobby Stores, Inc.*⁸ and *Zubik v. Burwell*⁹ were Supreme Court cases about exemptions to the ACA contraceptives provision.¹⁰ In light of the decisions in *Hobby Lobby* and *Zubik*, the Departments of Health and Human Services, Labor, and the Treasury (the “Departments”) that jointly administer the relevant ACA provision issued two interim final rules that expanded the church exemption and created a moral exemption for employers “with sincerely held moral objections to providing some or all forms of contraceptive coverage.”¹¹ Pennsylvania (later joined by New Jersey) sued, claiming that the interim final rules were invalid on substantive and procedural grounds. Pennsylvania argued that the rules were substantively defective because the Departments lacked statutory authority to promulgate the exemptions and argued that the rules were procedurally flawed because the Departments did not comply with the Administrative Procedure Act (APA) for notice and comment procedures. The district court issued an injunction against implementing the final rules, and the U.S. Court of Appeals for the Third Circuit affirmed.¹²

Justice Thomas, writing the majority opinion, joined by Chief Justice Roberts, and Justices Alito, Gorsuch, and Kavanaugh, held that “the Departments had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections.”¹³ The majority opinion first addresses whether the Departments have the authority to promulgate the exceptions. The main controversy here is whether the Departments through the HRSA are only allowed to determine

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what preventative care includes or are also entitled to exempt or accommodate employers based on religious objections.¹⁴ The majority opinion stressed that a plain reading of the ACA gives broad discretion to the HRSA to define preventive care and screenings and create exemptions and accommodation, noting that Congress could have limited the HRSA's discretion but did not.¹⁵ Thomas also explains that "it is clear from the face of the statute that the contraceptive mandate is capable of violating RFRA," and therefore, the Departments "must accept the sincerely held complicity-based objections of religious entities."¹⁶ The majority then considered whether the 2018 final rules were procedurally invalid and found that the "rules contained all of the elements of a notice of proposed rulemaking as required by the APA."¹⁷

Justice Alito's concurrence, which was joined by Justice Gorsuch, agreed with the holding of the majority but would have carried it further, explaining that not only were the Departments allowed to create exemptions and accommodations, the RFRA required the Departments to do so.¹⁸

Justice Kagan's opinion, concurring in the judgment, joined by Justice Breyer, upheld the "HRSA's statutory authority to exempt certain employers from the contraceptive-coverage mandate, but for different reasons," and she questioned "whether the exemptions can survive administrative law's demand for reasoned decisionmaking."¹⁹ Her opinion raises the probability of future litigation on this issue.

Justice Ginsburg's dissent, joined by Justice Sotomayor, argued that the Departments' exemptions and accommodation are inconsistent with Congress' "staunch determination to afford women employees equal access to preventive services, thereby advancing public health and welfare and women's well-being,"²⁰ and explained that the result of the religious exemption at issue before the Court will leave between 70,500 and 126,400 women of childbearing age without cost-free contraceptives.²¹

Looking to the future, a new presidential administration may result in a different approach to the Departments' exemptions and accommodations, although Justice Alito's concurrence hints that a more conservative Court may carry the *Little Sisters* holding further, mandating the exemptions and accommodations. Kagan's concurrence correctly points out that litigation in this area is far from over. As the Supreme Court continues to balance women's reproductive rights with the religious rights of organizations and businesses, we can expect more jurisprudence that prioritizes religious rights over women's rights to contraception. The recent death of Justice Ruth Bader Ginsburg and Amy Coney Barrett's confirmation to the Supreme Court will undoubtedly shift the balance even further in this direction.

* Lauren Fielder is Assistant Dean for Graduate & International Programs and Senior Lecturer at The University of Texas School of Law in Austin, Texas. She has been teaching constitutional law and other subjects for 15 years. Professor Fielder would like to thank Cate Marshall for her research assistance. She can be reached at LFielder@law.utexas.edu.

¹ *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, slip op. (2020) (hereinafter, "Little Sisters").

² *Id.* at 2.

³ See 42 U. S. C. §300gg-13(a)(4).

⁴ *Little Sisters* at 4.

⁵ *Id.* at 6. Eligible religious organizations were defined as those that "(1) [o]ppos[e] providing coverage for some or all of the contraceptive services...on account of religious objections; (2) [are] organized and operat[e] as ... nonprofit entit[ies]; (3) hol[d] [themselves] out as...religious organization[s]; and (4) self-certif[y] that [they] satisfy[y] the first three criteria. *Id.*

⁶ *Id.* at 7.

⁷ See *id.*

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⁸ See 134 S.Ct. 2751 (2014).

⁹ See 136 S.Ct. 1557 (2016).

¹⁰ “In *Burwell v. Hobby Lobby Stores*... [the Supreme] Court held that the contraceptive mandate substantially burdened the free exercise of closely held corporations with sincerely held religious objections to providing their employees with certain methods of contraception. And in *Zubik v. Burwell*.... [the Supreme] Court opted to remand without deciding the RFRA question in cases challenging the self-certification accommodation so that the parties could develop an approach that would accommodate employers’ concerns while providing women full and equal coverage.” Syllabus to *Little Sisters*, at 1-2 (2020).

¹¹ *Id.* at 2.

¹² See *id.*

¹³ *Little Sisters* at 2.

¹⁴ See *id.* at 14.

¹⁵ See *id.* at 18. The court stated, “The only question we face today is what the plain language of the statute authorizes. And the plain language of the statute clearly allows the Departments to create the preventive care standards as well as the religious and moral exemptions.” *Id.*

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 23.

¹⁸ See Alito, J., concurring in *Little Sisters*, at 19 (2020).

¹⁹ Kagan, J., concurring in *Little Sisters*, at 1 (2020).

²⁰ Ginsburg, J. dissenting from *Little Sisters*, at 21 (2020).

²¹ See *id.* at 2.

Free CLE | *HIPAA During a Pandemic: Is Health Information Still Protected?*

Megan Neel
DumasNeel in Houston

December 9, 2020
12:00-1:00
Zoom

[Register Here!](#)

- Medical Records
- Public Health Exception
- Testing Positive
- Healthcare Providers
- Business Owners

Free CLE | *CLE Video Library*

Member Benefit

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<http://txwomenlawsection.org/>

Click on “Members.”

Select “Members Only.”

Select “CLE Video Library.”

Type confidential pw “justice.”

Skills Savvy | *Tips for Conducting a Stellar Board Meeting*

Nikki Chargois-Allen*

A strong organization, strong council members, and an aggressive agenda. And they want me to run the meeting? Don't fret. The key to running a successful meeting is being organized, conveying the purpose of the meeting, and keeping it on track. Easy, right? Personalities, interruptions, side conversations, and members not feeling a part of the meeting could lead to a not-so-stellar meeting. Here are five tips on how to keep your meeting running smoothly and get your members engaged.

1. Make Objectives Clear

Making the objectives of the meeting clear is the best way to get off to a great start. An agenda should be prepared in advance of the meeting and shared, with enough time for the members to review it prior to the meeting. The agenda should be drafted in such a way that the amount of time needed to address each topic is taken into consideration. It is crucial in order to have a smooth meeting that the nuances of the topics that will be addressed and the types of discussions that members might engage in are anticipated in order for time constraints to be met. Time should be allowed for each topic to be thoroughly discussed while still allowing the meeting to end at the predetermined time. The agenda should be organized in such a way that the discussions logically flow. For instance, topics such as technology should be grouped close in time to topics regarding the website, social media, and methods for announcing meetings and events. If similar topics are not grouped on the agenda, discussions will inevitably be repeated when one committee has to address topics similar to topics addressed by other committees. There is no faster way to lose the attention of members than having the same discussion over and over and over again. Members should have a clear understanding of the time commitment that the meeting requires, and that time commitment should be adhered to.

2. Assign Roles

Pull in different members to have a role in the meeting. Making members feel as if they are needed is the easiest way to encourage members to be active participants and continue to work for the good of the organization. Members who have special roles in the meeting should be notified (*warned*) in advance of the meeting. Nothing like calling on someone during a meeting and receiving the "deer in the headlights" look in return. The members with special roles should understand what will be requested of them, be provided any relevant meeting materials, and have the opportunity, if needed, to brainstorm the objectives of the discussion with you. Having multiple members participate in the meeting also helps to eliminate the possibility of a monotone meeting, resulting in members taking naps. The different tones, rhythms of speech, inflections, and levels of enthusiasm with each new speaker will keep the attention of the members and ward off boredom.

3. Fearlessly Facilitate

As the leader of the meeting, you are the encourager of discussions, the referee, and the moderator. These roles should not be taken lightly. A speaker who drones on and on can throw a meeting off track in regard to the time constraints and the other members' attention spans. A heated discussion that is out of control can derail the entire meeting. And members not being respectful of the input of other members could result in a loss of respect for the entire group and/or process. A perfect example is the first United States Presidential Debate in 2020. The leader has to be able to gauge when discussions should be ended and/or tabled. Discussions that are lengthy can be sent to committees for review and discussion outside of the meeting time. And, in contradiction to the normal rule of not interrupting when someone is speaking, the

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leader has to be fearless and jump in when necessary in order to control the meeting. The title of “Fearless Leader” is not just casual nomenclature, but a title that needs to be embraced with gusto.

4. The Magic of Robert’s Rules

Robert’s Rules of Order (“Robert’s Rules”) is the best tool for assisting with controlling a meeting. If you are not familiar with or comfortable with Robert’s Rules, appoint someone to be the monitor of the formal progression of the meeting. This is a perfect role for the next president or chair-elect. Robert’s Rules help the members understand that there is an orderly procedure for how matters are presented to the group, debated, and voted on. Robert’s Rules are the most effective way to make sure that all ideas are respected and that there is understanding regarding the approval and disapproval of motions. Cling to Robert’s Rules as if it is your bible.

5. R-E-S-P-E-C-T

The final, secret ingredient for having a successful meeting is respect. There has to be respect for the members’ time. There has to be respect for the members’ input and discussions. And there has to be respect for the process (e.g., Robert’s Rules). With respect as the guiding force, members should come to know what to expect from the meeting and what is expected from them during the meeting. This knowledge usually carries over to the members being more involved due to understanding how their roles fit into the entire performance.

So, just like this article began, it IS easy, right? Embrace your role fearlessly and call your stellar meeting to order!

** Nikki Chargois-Allen is a civil litigator at Davidson Troilo Ream & Garza in San Antonio, Texas. She is immediate past chair of the State Bar of Texas Women and the Law Section. Nikki can be reached at NAllen@dtrglaw.com.*

Skills Savvy | *So You Wanna Run for Office?*

Chief Justice-Elect Rebeca C. Martinez*

When you think about it, the decision to run for office is not that much different than deciding to go to law school or hanging up your own shingle. You might be encouraged, discouraged, advised to wait or to be better prepared. When it comes down to it, the question really becomes how much do you really want it? Like many of you, I was a “first.” I left a firm to start my own law practice and lost my first run for office. I won my next 3 contested races. Each time, I had a strong desire. I made a decision and did what I had to do.

Why? As a judicial law clerk, I was indoctrinated with a reverence for the court. I worked with the very model of an appellate jurist, yet gained only a peripheral view of his political life. Later in private life, I volunteered on campaigns but, in retrospect, held no real desire to run for office. After 20 years of civil and criminal trial work, an opportunity arose. For the first time, I set eyes on a seat at a table where important decisions were made. At first glance, not one justice had a similarly diverse litigation background as I did, so I convinced myself that I could contribute in a positive way. The most important asset I had was knowledge of the job and what it demanded. What I lacked in political experience, like anything else, I made up for in confidence, hard work and perseverance.

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It's gonna be hard. There's no sugar-coating it. To quote Stacy Abrams, "Leadership is hard. Convincing others – and yourself – that you are capable of taking charge and achieving more requires insight and courage." And, arguably, it's a bit tougher for women, women of color and the LGBTQ community. Fortunately, gumption is a common denominator. Understand that women will be your biggest supporters and harshest critics, and both fear and ambition are the greatest obstacles. My advice is often sought by those seeking to run, and when asked for their "why," I must say not all respond with a sense of humility and heart for service. Some are woefully ignorant and unprepared, either for the job, the campaign or both. For sure, like marriage, being in love with the idea of a job more than the job itself will leave you with regret.

Just decide, and know you're not alone. No one asked me to run. I figured out stuff on my own, and regrettably didn't ask for a lot of help. That was my #1 mistake. Surround yourself with people smarter than you and seek advice from those who've done it. Apply for the LBJ Women's Campaign School at <https://lbjwcs.lbj.utexas.edu>. I'm on the Advisory Board, and we are looking for a few good women. I think what Margaret Mead really meant to say was, never doubt that a small group of thoughtful and committed women can and will change the world.

** Chief Justice-Elect Rebeca C. Martinez sits on the Texas 4th Court of Appeals in San Antonio, Texas. She serves on the LBJ Women's Campaign School Advisory Board. Justice Martinez can be reached at Rebeca.Martinez@txcourts.gov.*

Competition | *Texas Law Student Writing Competition*

The State Bar of Texas Women and the Law Section (the "Section") invites students currently attending a law school in Texas to participate in its 2021 Texas Law Student Writing Competition (the "Competition").

Award

The Harriet E. Miers Writing Competition Award (the "Award") is named in honor of a lawyer who served as White House Counsel to George W. Bush. She is the first woman to have headed the State Bar of Texas.

Honors

The student who wins the Competition, as determined by the Section in its sole discretion, will receive the Award. The Award includes \$1,000 payable to such student for law-school education expenses. The Section, in its sole discretion, will publish such student's essay in its newsletter. (The Section reserves the right not to grant the Award.)

The student who wins second place in the Competition ("Second Place"), as determined by the Section, in its sole discretion, will receive Second Place recognition, including \$500 payable to such student for law-school educational expenses. The Section, in its sole discretion, will publish such student's essay in its newsletter. (The Section reserves the right not to grant Second Place.)

Submissions

Students wishing to be considered for the Award and for Second Place should submit an essay of no more than 2,500 words on the below-referenced topic by no later than February 28, 2021, to Section Chair

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Teresa Schiller via email to sbotwomenantthelaw@gmail.com with the following subject line: "WAL Student Writing Competition."

The topic of the essay is to identify and analyze a legal challenge for women in Texas and/or in the United States, based on recent news reports. Imagine that you have been invited to publish an op-ed in a newspaper read by the general public.

- What is the challenge? How are women harmed?
- What is the relevant law(s)?
- How should the challenge be addressed?

Evaluation

Submissions will be evaluated based on criteria including the following:

- legal reasoning
- readability
- thoroughness
- timeliness of topic
- organizational structure
- *Bluebook* citation
- grammar.

Goals

The Section designed the Competition with the following goals:

- to help participating Texas law-school students prepare to tackle legal and societal challenges after graduation and strengthen their written advocacy skills;
- to increase awareness of and involvement with the Section; and
- to further the Section's mission.

The Section's mission is to encourage and facilitate the active and effective participation of women in the legal profession and in the community and to address the current needs of and issues affecting women.

Power Lunch | *Business Development Workshops*

Laura Kugler
Hawkins, Parnell & Young, LLP in Dallas

Lindsay Owens
Lynch Chappell & Alsup in Midland

Cynthia Barela Graham
Law Office of Cynthia Barela Graham

Teresa Schiller
Beard Kultgen in Waco

*Free! Virtual! Members only.
Registration: Tracy Sheehan at tsheehan@hpylaw.com.*

These videoconferences will cover similar material.
Members may want to register for workshops
targeted to their geographical areas, but
they may register for any of the workshops.
No CLE credit available.

Don't miss a Power Lunch! Supplemental program to be offered in
June 2021 at State Bar of Texas Annual Meeting.

November 11, 2020
12:00-1:00

Dallas/Fort Worth and
North Texas

December 8, 2020
12:00-1:00

Brownsville, El Paso, Laredo,
McAllen, and South Texas

January 13, 2021
12:00-1:00

Houston Area

February 10, 2021
12:00-1:00

Agricultural -- Abilene, Amarillo,
Lubbock, San Angelo, and
Wichita Falls

March 18, 2021
12:00-1:00

San Antonio and
South Central Texas

April 14, 2021
12:00-1:00

Oil/Gas -- Midland, Odessa,
Tyler, and East Texas

May 12, 2021
12:00-1:00

Austin, Waco, and
Central Texas

SQUAD | *Section Leaders*

Teresa Schiller

Chair

Nicondra (“Nikki”) Chargois-Allen

Past Chair

Leigh Goodson

Chair-Elect

Denise Alex

Vice-Chair/Membership

Sarah “Ellis” Iverson

Vice-Chair/Newsletter

Betsy Johnson

Secretary

Natasha Martinez

Treasurer

Laura Kugler

Chronologist

Emeritus Council Members

Judy Ney

Deborah Race

Council Members

Elizabeth Cantu

Lindsay Owens

Patricia Chapman

Cynthia (“Cindi”) Barela Graham

Summer Olmos

Deborah Cordova

Kirby Drake

Judge Maria Salas-Mendoza

Susan Kelly

Advisors from State Bar of Texas

Board of Directors

Amy Welborn

Wendy-Adele Humphrey

Leigh Goodson

Section Representative to State Bar of

Texas Task Force on Diversity, Equity and

Inclusion

Summer Olmos

Section Liaison to State Bar of Texas Pro

Bono Workgroup

Annual Meeting Committee

Co-Chairs

Elizabeth Cantu

Nikki Chargois-Allen

Awards Committee Co-Chairs

Patricia Chapman

Hon. Maria Salas-Mendoza

Deborah Race

Business Development Workshop

Committee Co-Chairs

Cindi Graham

Laura Kugler

Lindsay Owens

CLE Committee Co-Chairs

Reagan Boyce

Kirby Drake

Finance Committee Co-Chairs

Natasha Martinez

Judy Ney

Membership Committee Co-Chairs

Denise Alex

Dori Kornfeld Goldman

Newsletter Committee Co-Chairs

Tiffanie Clausewitz

Susan Fuertes

Ellis Iverson

Website and Social Media Committee

Co-Chairs

Denise Alex

Leigh Goodson

Alyson Martinez

Jessica Mendez

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William Korn

Lyndsay Smith