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# Supreme Court's ruling against Abercrombie & Fitch: protection of religious liberty?

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The Supreme Court ruled Monday that Abercrombie & Fitch, the famous clothing retailer, violated civil rights law by failing to accommodate a Muslim applicant wearing the hijab.

According to Politico, Abercrombie & Fitch refused to hire Samantha Elauf in 2008 as a sales associate due to her hijab violating the company's "look policy." At the time, the clothing chain prohibited employees from wearing head coverings, though the company has since changed this policy to allow headgear. Following the incident, Elauf filed a complaint with the Equal Employment Opportunity Commission.

This was not the first time that Abercrombie was brought to legal challenge due to its hiring policy. Under Title VII of the 1964 Civil Rights Act, employers must provide "reasonable accommodation without undue hardship." The Supreme Court ruled that employers have the obligation to provide accommodation to employees even if they do not ask for one.

The near unanimous decision, 8-1, was not surprising among the legal community, and it will make accommodation rules cleared for employees and employers. Yet the ruling, along with those anti-discrimination laws, is still a huge obstacle in the labor market, and the balance between religious freedom and private ownership remains inconsistent.

In the business world, private companies should have a high degree of discretion on hiring policy and work ethics. Even in the same industry, different companies may prefer some special set of skills and require job applicants to show desired personalities that employers think match properly with company goals or characteristics.

As a clothing retailer, Abercrombie & Fitch has strong preferences regarding its employees' appearance and the way they dress. This is how they appeal to customers in the market. Though we all agree that rejecting an applicant purely based on his or her body shape or appearance is discriminatory, the model industry rarely recruits people who are obese or do not look as physically attractive as models in a conventional way. It is a brutal yet honest reality. Some might consider these behaviors to be a violation of civil rights, but in fact, these are the ways that private companies employ to facilitate what is the best for achieving their goals. This should be seen as normal market behavior rather than explicit discrimination and intentional targeting of a specific minority and religion.

After the civil rights movement, laws and courts in this country have had a tendency to protect minorities, sometimes overprotect them, even at the cost of abandoning the principles of liberty. Such a change in direction has led to inconsistency in decisions made by courts at different levels. For example, in the EEOC v. Abercrombie & Fitch case, a lower court's decision was in favor of EEOC, and it was reversed when the case went to the Tenth Circuit Court. The Supreme Court, thereafter, reversed the Tenth Circuit's ruling. If the case were to be reviewed again at a lower court, the outcome need hardly be predicted.

Religious advocacy groups see this decision as championing religious freedom. William Burgess, a senior staff attorney at the Council on American-Islamic Relations, told Politico that the decision urges employers to change their hiring policies and not consider religion as a factor in it.

But this case has little to do with religious freedom. Refusing to hire a person based on her religion does not infringe her right to practice a particular religion. The public is usually not aware that the subject that could potentially threaten religious freedom is the government, not a private company, because a private agent has no way to exert coercion on anyone. When the state of

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the government, not a private company, because a private agent has no way to exert coercion on anyone. When the state of Indiana passed the Religious Freedom Restoration Act early this year to provide private businesses with the right to excuse themselves from engaging in activities that they think are in conflict with their religious views, minorities and mainstream media waged a war against the state government by accusing it of discriminating against minorities.

This is a double standard. If courts make decisions following the wind of social movements or change of social values, it is judiciary activism, and the judicial branch will become more political swinging. This is a dangerous trend moving slowly to change judicial power, particularly as the demographic shifts toward minorities.

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