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Guest Commentary

Churches Have Right To Decide Who's A Minister

Key Supreme Court ruling upholds firing of religious school teacher

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In an important church-state case decided in January 2012, the U.S. Supreme Court has for the first time barred certain employment discrimination suits against employers of churchrun or other religious organizations based on the autonomy granted to those employers under the First Amendment's Establishment and Free Exercise of Religion clauses, which provide, in part, that "Congress should make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

In Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC, a unanimous decision written by Chief Justice John Roberts, the court recognized a "ministerial exception" to federal protections against job discrimination to support "the interest of religious groups in choosing who will preach their beliefs, teach their faith and carry out their mission." The Court held that it is impermissible for the government to contradict a church organization's employment decision about who can act as its minister, which is a right grounded in the First Amendment. The Court said it was expressing no view on whether the exception would prevent other employee lawsuits against religious organizations, including breach of contract or tortious conduct by the religious organization employers. That leaves for another day questions of religious organization employer liability in wage claims, sexual harassment or other various injuries.

Hosanna–Tabor operated a small school in Redford, Mich., offering a "Christ-centered education to students in kindergarten through eighth grade." It classified teachers as "called" and "lay." "Called" teachers are regarded as called to their vocation by God through a congregation and having satisfied specified academic requirements. "Lay" or "contract" teachers are not required to be trained by the Synod or even to be Lutheran.

Cheryl Perich became a called teacher, had significant religious training and received a "diploma of vocation" designating her as a commissioned minister. After teaching for about five years, she became ill, was diagnosed with narcolepsy and took disability leave for a school year. When she requested to return in the middle of the following school year, she was told a lay teacher had been hired for the remainder of term and she should resign. Persisting, she presented herself as medically cleared to return to work and threatened to file suit. As a result, she was fired because litigation contravened the Lutheran doctrine that disputes among Christians should be resolved internally without resorting to the civil courts.

ADA Claim

Upon termination, Perich alleged violation of the Americans with Disabilities Act, which prohibits an employer from discrimination against a qualified individual on the basis of disability, and also, prohibits re-

taliation for making a charge under the ADA. She also claimed that the stated reason for her termination was a pretext for discrimination. The district court granted summary judgment, dismissing the claims as barred by the First Amendment. However, the U.S. Court of Appeals for the Sixth Circuit vacated and remanded, having concluded that Perich did not qualify as a "minister" under the exception.

The U.S. Supreme Court reversed the Sixth Circuit and ruled that requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, infringes on the Establishment and Free Exercise clauses. Therefore, the court found those clauses protect a religious group's right to shape its own faith and mission through its appointments and against interference with the internal governance of the church and the decision to fire one of its ministers.

The court also found that Perich was a minister covered by the ministerial exception by virtue of the title given to her by the church and the religious teaching functions she performed. The court held that the purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. "That exception instead ensures that the authority to select and control who will minister to the faithful — a matter strictly 'ecclesiastical.'" The court also stated that the ministerial exception is an affirmative defense to a cognizable claim, not a jurisdictional bar to a claim.

In a concurring opinion, Justices Samuel Alito and Elena Kagan state that the "ministerial" exception should not be limited by the title "minister," but should apply to any employee who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith. In another concurring opinion, Justice Clarence Thomas states that the religion clauses require deference to a religious organization's sincere and good faith understanding of who qualifies as its minister, without judicial attempts to fashion a civil definition through a bright-line test or multi-factor analysis.

The court charts the interesting history of the controversy between church and state from 1215, when the first clause of the Magna Carta stated that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired." During the reign of Henry VIII, however, the monarch became the supreme head of the church, which eventually led to the Puritans fleeing to New England to escape the control of the national church.

That later led to the adoption of the First Amendment to foreclose the possibility of a national church and to prevent the government from appointing ministers and granting religious groups freedom to select their own – rules that were first reaffirmed in letters between James Madison and Thomas Jefferson between 1806 and 1811, and later in case law. That has now been further reaffirmed by this first ruling specific to employment discrimination in the employee-employer relationship at religious organizations. •

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