

High stakes for religious freedom

A church-state dispute about employment discrimination argued before the U.S. Supreme Court last week doesn't have the headline appeal of culture-war battles over "prayer in school" or crèches in courthouse lobbies.

But pay close attention: The outcome in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* may have far more impact on religious freedom than any ruling handed down by the high court in more than a decade.

What's at stake is the meaning and scope of the ministerial exception to job-discrimination laws, a legal doctrine widely accepted by lower courts — but never explicitly recognized by the Supreme Court — that protects the freedom of religious communities to hire and fire their leaders.

At first blush, the "exception" shouldn't be controversial. If the religious-liberty provisions of the First Amendment mean anything, they bar government from interfering with the autonomy of faith groups to choose their ministers and teachers.

But First Amendment conflicts are often about defining the parameters of fundamental rights — and *Hosanna-Tabor* is one such case.

Cheryl Perich, a former teacher at Hosanna-Tabor Lutheran Church's school in Redford, Mich., is suing because she maintains that the church violated the Americans with Disabilities Act when it fired her after a disability-related leave of absence. Although Perich taught religion for 30 minutes four days a week and led her class in prayer several times daily, most of her time was spent teaching secular subjects.

According to the church, however, Perich was a "called teacher" (a commissioned minister in the Lutheran Church-Missouri Synod) in a school that seeks to provide a "Christ-centered education." From the church's perspective, her position falls under the ministerial exception.

Church officials argue that allowing Perich to sue under the federal disabilities law would violate the church's First Amendment right to choose religious workers essential to the Christian mission of the school.

Perich lost the first round when a federal district judge dismissed her claim, holding that the ministerial nature of her position put it beyond the reach of the anti-discrimination law. But the 6th U.S. Circuit Court of Appeals reversed the lower court, concluding that Perich's duties mostly involved teaching secular subjects.

Now the Supreme Court must decide whether Perich can pursue her discrimination lawsuit against Hosanna-Tabor — or whether the religious school has the right to make employment decisions about personnel designated "ministerial" by the church.

Many religious groups, liberal and conservative, are clearly worried about the outcome — as evidenced by the long list of friend-of-the-court briefs filed in support of the church school.

Of particular concern to many faith communities is the appeals court's reliance on the quantity of time spent by Perich teaching secular subjects. Counting minutes, they argue, is a simplistic and arbitrary test that ignores the full nature of the employee's function within the religious mission of the school.

No matter who wins this case, the ministerial exception will likely be affirmed by the Supreme Court in some form. After all, in past cases the court has recognized that government may not get entangled in the internal religious affairs of religious groups, including selection of clergy.

But if the court follows the 6th Circuit and limits the scope of the ministerial exception, religious organizations, including religious schools, will have considerably less freedom to determine who should be their ministers, leaders and teachers. Look for an outbreak of litigation challenging hiring and firing decisions by religious communities.

Government does not have the competence — and should not have the power — to determine who is or isn't called to ministry. The Supreme Court has a chance to affirm the autonomy of faith communities, the free exercise of religion, and the separation of church and state.



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