News



The U.S. Supreme Court building is seen March 26 in Washington. (CNS/Brendan McDermid, Reuters)



by Peter Feuerherd

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For Katie Boller Gosewisch, it was a dream job, until she collided with a legal doctrine called the ministerial exception.

As director of faith formation for 11 years at St. Andrew's Church in Elk River, Minnesota, she was immersed in parish life, able to apply her master's degree in theology from St. John's University in Collegeville to the day-to-day work of religious education. It wasn't particularly lucrative – she pulled in about $47,000 per year – but it was psychologically and spiritually rewarding.

She particularly liked it when a child she had taught remembered her years later. She enjoyed working with parish families and applying her theology degree in the most practical way possible.

But it began to fall apart in the summer of 2015.

In June of that year she called the local sheriff after she was told about an incident on a bus on a parish youth service trip, which went beyond the usual boy-girl banter and evolved into an allegedly ugly case of sexual harassment. The girls were allegedly called "whores" and other names. Their parents demanded action.

The incident report was filed, Boller Gosewisch considering it part of her obligation as a parish worker trained, as in many other dioceses, to do something when faced with potential cases of sexual harassment. She was a legal mandated reporter under Minnesota law. But she said that vigilant action was the beginning of the end of her job.

"From the moment I made that report my life has been incredibly changed," she said, noting that she subsequently received poor work evaluations which culminated, by February 2016, with her resignation, which she said was given under pressure. At the age of 36, with a child at the parish school and another in preschool, Boller Gosewisch was out of a job, causing what she described as severe emotional and financial distress.

The Diocese of St. Cloud, where St. Andrew's is located, declined to comment, stating through a spokesman that it does not comment on personnel issues.

She enlisted the help of an attorney, and was offered an internal diocesan mediation of the situation, via a panel that included parish trustees and a pastor, a group she

deemed not to be objective. At the end of that process, she was offered a month's severance. Boller Gosewisch wanted to sue for her old job back, an effort thwarted by a legal doctrine referred to as the ministerial exception.

For church workers who feel that they have been treated unfairly, the ministerial exception offers their employers a legal way out of liability. Courts grant churches wide leeway in selecting their ministers. The concept of ministers has subsequently expanded, as dioceses and parishes invoke the ministerial exception to dismiss teachers, including those who do not teach religion, for being involved in state-recognized gay marriages. The issue emerged recently in the Archdiocese of Indianapolis, among other dioceses.

Church employees without legal recourse can blame the First Amendment and how the U.S. Supreme Court has interpreted that legal linchpin of the Constitution.

The right of ministerial employees to sue for their old jobs was largely shut down as a result of *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, a case decided by the U.S. Supreme Court in 2012. The court ruled, unanimously, that a Michigan Lutheran church had the right to dismiss a religion teacher who claimed she was unfairly discriminated against because of her physical disability. The decision was a clear signal that the court didn't want to be in the business of determining who should serve as ministers in any church.

In a court famous for liberal and conservative divides, the ruling was unanimous. The justices ruled that Cheryl Perich, a religion teacher, could not reclaim her job because the Americans with Disabilities Act did not cover a job that could be defined as a religious ministry.

Thomas Jipping, a senior legal fellow with the Heritage Foundation, told NCR that the legal doctrine protects the rights of religious institutions to pick their own ministers. He said the courts attempt to mediate competing concerns, such as those spelled out in employment discrimination laws. But, in weighing such cases, when there is a conflict, he said, "the Constitution always wins." That's the way it should be, Jipping told NCR.

If the First Amendment fails to protect the rights of churches to select its own ministers, "then the free exercise of religion doesn't mean anything," he said.

While the ministerial employment issue seems to be legally settled, Jipping notes that it cannot be applied across the board to all church employees. A groundskeeper, for example, who is a victim of job discrimination could bring a suit against church employers.

For Deacon Ron Deal, his clerical status clearly defines him as a minister. Still, he is arguing that he was unfairly suspended from Holy Family Catholic Church in Brentwood, Tennessee, after the Diocese of Nashville issued a list of clergy sex abuse perpetrators that Deal said was incomplete. He called for a public, objective investigation, and went to the local press to air his complaints after being ignored by the diocese.

"I needed to speak out on this," Deal told NCR, arguing that the lack of a complete list hurt the credibility of the church and was harmful to abuse survivors.

Related: Nashville deacon removed from ministry for speaking out about sex abuse

Deal was suspended from the parish in July, with the word coming from his pastor.* But Deal believes that the orders to terminate his services came from Bishop J. Mark Spalding of Nashville. Deal, ordained in 2006, had previously served as director of deacon formation for the diocese. An attorney, he now works in the sports industry and no longer receives a stipend from the parish.*

Deal sees hope regarding his case in the church's own canon law. He has appealed to the Vatican under the provisions of Pope Francis' apostolic letter *Vos estis lux mundi* ("You are the light of the world"), which offers protections for whistleblowers in cases of sex abuse. He has appealed to the Congregation for the Clergy in Rome.

For Boller Gosewisch, there has been no recourse. She believes the internal diocesan mediation process, which uses clerics and diocesan employees on its panel, is stacked against employees bringing complaints. She moved on in 2018 to become executive director of a Twin Cities nonprofit, but she still believes an injustice was done to her.

"Trying to find an attorney to take this on in the first place was very difficult," she said. "Everyone who I spoke to didn't think it was worth their time, largely because of the ministerial exception."

According to Jipping, the legal frontiers of religious liberty have moved beyond employment law to other areas, such as cases where bakers argue they are being coerced to provide wedding cakes for gay marriage celebrations in violation of their religious beliefs. Too often, he said, media coverage focuses on one side of the religious liberty equation, the rights of employees and others who would normally be covered under civil rights protections in statutes.

He said that is often unfair to those who perceive the issues as more of the First Amendment right to free expression. "My exercising a right to religion doesn't make me into some kind of bigot," he said.

For Boller Gosewisch, the end of her dream job created a few years of anxiety and financial distress. She looked for jobs in other parishes, but was unable to land one. "I have now landed on my feet, finally," she said. But her dream work of serving the church as a religious educator has been left behind.

[Peter Feuerherd is NCR news editor. His email address is pfeuerherd@ncronline.org .]

**This story has been updated to correct the month that Deal was suspended from the parish, and that he no longer receives a stipend.*

Advertisement

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