

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

January 12, 2012 at 7:55am

Supreme Court sides with churches in employment fights

by Lauren Markoe by Religion News Service

WASHINGTON -- The U.S. Supreme Court on Wednesday unanimously threw its support behind a church school that fired a teacher, using a widely watched church-state case to bolster a legal doctrine that exempts religious institutions from some civil rights laws.

Religious groups heralded the ruling as a firm assertion of religious freedom that keeps personnel decisions about religious employees where they should be: within a church, synagogue or mosque.

"The court hasn't spoken this clearly on a church-state matter in almost 20 years," said Rob Garnett, a law professor at the University of Notre Dame who wrote an amicus brief on the case in support of the Hosanna-Tabor Evangelical Lutheran Church and School.

"This is bedrock," Garnett continued. "All the justices came together to say if religious freedom means anything, it means governments can't interfere with religious institutions' decisions on who is going to be their minister or teacher."

Those who advocate for the separation of church and state said the court has now set the bar far too high for employees of religious institutions who seek redress against discrimination.

"The really terrible thing about this decision is that if you fire someone and religion is just a pretext, it can't be addressed by courts," said the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State.

"It's just a gigantic new exception, a new loophole to the civil rights law for religious groups that will not be shut in a very long time -- if ever."

The Hosanna-Tabor case revolved around Cheryl Perich, who had been elevated by the Lutheran church

that ran the school to a "called teacher" position, one with some religious responsibilities. Although most of her duties were secular, Perich spent part of each day teaching religion and sometimes led chapel services.

Diagnosed with a sleep disorder, Perich took a leave of absence in 2004 and was replaced by another teacher. Cleared by her doctors to return to work, the church refused to reinstate her.

Perich filed a complaint with the Equal Employment Opportunity Commission, arguing that the school was hiding behind its religious protections to ignore the Americans with Disabilities Act.

The EEOC ruled for Perich, but she lost a lawsuit against the school in federal court in 2008. The school successfully argued that the doctrine of ministerial exception, which is well established in state courts, gave it broad hiring and firing powers over all religious employees, even if they engaged in nonreligious activities.

Advertisement

Lawyers for the school argued that the Lutheran tradition requires that disagreements within the church be settled within the church, and that Perich had flouted this requirement by going to court.

Perich appealed, and in 2010 the Cincinnati-based 6th U.S. Circuit Court of Appeals ruled in her favor. The Supreme Court, in an opinion written by Chief Justice John Roberts, gave the final victory to the church, grounding the decision in the First Amendment's guarantees of free exercise of religion, and a prohibition on government establishment of religion.

Justices Clarence Thomas, Samuel Alito and Elena Kagan filed concurring opinions.

"The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission," Roberts wrote.

"The First Amendment has struck the balance for us," Roberts continued. "The church must be free to choose those who will guide it on its way."

Said the Rev. Paul Undlin of Hosanna-Tabor, the Lutheran Church-Missouri Synod church that ran the now-closed school: "It is amazing when a church from Redford, Mich., stands up for its rights and ends up going all the way to the Supreme Court. Praise God for giving the justices the wisdom to uphold the religious freedom enshrined in our Constitution."

Source URL (retrieved on 08/23/2017 - 20:24): <https://www.ncronline.org/news/politics/supreme-court-sides-churches-employment-fights>

Links:

[1] <https://www.ncronline.org/donate?clickSource=article-end>