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## **Supreme Court Backs Church in Teacher Case**

By Mark Walsh

Jan. 18--WASHINGTON -- A unanimous U.S. Supreme Court decision last week that the Constitution bars employment-discrimination lawsuits against churches by their ministers holds major implications for religious schools, but it leaves unclear whether all teachers in such schools are now unprotected by civil rights laws.

The high court ruled that a Lutheran-school teacher in Michigan was effectively a minister and thus could not sue her church employer for discrimination.

"The members of a religious group put their faith in the hands of their ministers," wrote Chief Justice John G. Roberts Jr. "Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, ... interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."

### **Religious Freedom**

The ruling in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (Case No. 10-553) was without dissent, which was a surprise given the sharp disagreement among interest groups that filed briefs and from the tenor of oral arguments in the case. The decision sparked sharply differing reactions.

"The need of churches to have control over the selection of people who serve as their ministers and their religious teachers is pretty central to the First Amendment, and the Supreme Court agreed," said Douglas Laycock, a professor of law and religion at the University of Virginia, in Charlottesville, a noted scholar of the amendment's religion clauses who argued the Michigan church's case before the justices.

Christopher C. Lund, a law professor at Wayne State University, in Detroit, who wrote a friend-of-the-court brief on behalf of the Lutheran Church-Missouri Synod, which employs nearly 10,000 teachers at its almost 1,100 parochial schools, said the two sides in the dispute "offered very different approaches to church and state, and the court adopted quite a sweeping view of religious freedom."

But the Rev. Barry W. Lynn, the executive director of Americans United for Separation of Church and State, in Washington, said in an interview that the decision "allows a religious body to declare employees to be 'ministers' and then fire them or treat them shabbily for any reason, religious or otherwise. ... It's astonishing."

**Leslie C. Griffin, a constitutional-law professor at the University of Houston Law Center**, who organized a friend-of-the-court brief by law professors on behalf of the fired teacher, said: "I think this was a key place for the court to not say that religious employers can treat their employees any way they like. Why would you want to give religions the green light to discriminate?"

### **'Called' Teacher**

The dispute involved Cheryl Perich, a 4th grade teacher at Hosanna-Tabor School in Redford, Mich. She mostly taught secular subjects but was a "commissioned minister" of the Lutheran faith. After she took a leave of absence during the 2004-05 school year because she suffered from narcolepsy, Ms. Perich sought to return to her job, but clashed with church and school officials, who believed she was not ready to return.

When she threatened a lawsuit, the church dismissed her. Ms. Perich complained to the EEOC. She argued that the church had violated her rights under the Americans with Disabilities Act of 1990 over its handling of her disability leave. The EEOC took up her case solely on the claim that the church had retaliated against her, in violation of the ADA, based on the threatened lawsuit.

The church sought dismissal of the suit based on the "ministerial exception," a principle recognized in lower federal courts but never ruled on by the Supreme Court until last week. Ms. Perich's suit was barred by the First Amendment's religion clauses, the church said, because the claims concerned the employment relationship between a religious institution and one of its ministers.

The church won in a federal district court but lost in the U.S. Court of Appeals for the 6th Circuit, in Cincinnati, which held that Ms. Perich was not a minister because her duties as a "called teacher" of the Lutheran faith were essentially identical to her duties as that of a lay teacher at the church school.

### **No 'Stopwatch' Test**

In his opinion for the court, Chief Justice Roberts observed that church-state controversies over religious offices go back at least as far as the Magna Carta, which sought to guarantee that "the English church shall be free."

The chief justice said that by imposing an unwanted minister on a church, the state would infringe on the First Amendment's guarantee of free exercise of religion, "which protects a religious group's right to shape its own faith and mission through its appointments."

The chief justice said there were numerous reasons why Ms. Perich qualified as a minister of the Lutheran church. She had formal religious training as a "commissioned minister" of the church, he noted, and she held herself out as a minister by accepting a formal "call" to service and by accepting a housing allowance available only to those in the ministry. She also taught her students religion four days a week and took them to chapel services once a week, the chief justice wrote.

The lower appeals court erred by focusing on Ms. Perich's secular duties, he said.

"It is true that her religious duties consumed only 45 minutes of each workday, and that the rest of her day was devoted to teaching secular subjects," the chief justice said. "The issue before us, however, is not one that can be resolved by a stopwatch."

Chief Justice Roberts also said the purpose of the ministerial exception was not only to safeguard church employment decisions when they are made for religious reasons.

And he rejected the EEOC's view that the ministerial exception be limited to those who perform exclusively religious functions.

"We are unsure whether any such employees exist," the chief justice said, since even the heads of churches and congregations have secular duties, such as managing church finances and overseeing the upkeep of facilities.

What is less clear from last week's opinion is how far it extends to other church employees, such as parochial school teachers whose primary duties are to teach secular subjects.

### **Concurring Opinion**

Two concurring opinions of the court sought to influence lower-court interpretations on that question.

Justice Clarence Thomas said courts should defer to a religious organization's "good-faith understanding of who qualifies as a minister."

Justice Samuel A. Alito Jr., in a concurrence joined by Justice Elena Kagan, stressed that the ministerial exception was not limited to covering those church employees with formal religious training.

"It 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," Justice Alito said. "While a purely secular teacher would not qualify for the 'ministerial' exception, the constitutional protection of religious teachers is not somehow diminished when they take on secular functions in addition to their religious ones."

The question is more than academic for the nation's Roman Catholic bishops, who oversee some 7,200 parochial schools employing more than 143,000 teachers and other education professionals.

Anthony R. Picarello Jr., the general counsel of the U.S. Conference of Catholic Bishops, in Washington, said in an interview that after the Supreme Court's decision, lower courts will continue to look mostly at the nature of the job in question.

"The religion teacher--that's the easy case," said Mr. Picarello, who filed a friend-of-the-court brief for the Catholic bishops supporting the Lutheran congregation. "The math teacher at the religious school--they have a role-model function, but the substance of what they write about on the chalkboard is math. But if you have a math teacher who leads students in prayer, or who teaches even a single section of theology, that's a much stronger case."

**Ms. Griffin**, the University of Houston law professor who was on Ms. Perich's side, said some lower courts had already found the ministerial exception to apply to parochial school principals and teachers with varying levels of involvement with religion.

"You would want to think a regular school teacher [teaching secular subjects in a religious school] could win" a job-discrimination case, she said. "But after this ruling, I guess you would want to tell all educational employees at religious schools to be careful."