

Court weighs rights of church to fire teacher as an exception to law

WASHINGTON – The Supreme Court justices struggled Oct. 5 with where to draw the line for what is known as a ministerial exception that exempts religious institutions from some civil laws when it comes to hiring and firing.

In the case of Cheryl Perich, who was a teacher at Hosanna-Tabor Evangelical Lutheran School in Redford, Mich., attorneys for her, for the federal government on her behalf, and for the church debated with the justices how to determine whether the school was allowed to fire her for threatening to sue under the Americans with Disabilities Act.

Perich had been a teacher at the school with a class load of primarily secular courses, when she went on a lengthy sick leave in 2004. When she tried to return to work, the school declined to put her back in the classroom and urged her to resign, saying they already had hired a replacement for her. When she threatened to sue under the disabilities law, the school fired her, saying she had been insubordinate by threatening to go outside the church's ecclesiastical appeal procedures.

Douglas Laycock, the attorney for Hosanna-Tabor Church – the school has been closed for several years – told the justices in oral arguments that the underlying principle in the case is that “churches do not set the criteria for selecting or removing the officers of government, and government does not set the criteria for selecting and removing officers of the church.”

Hosanna-Tabor has maintained that because Perich was what is known as a “called” teacher, having met criteria of the church for a level of religious training and taught some religion classes, she was a ministerial employee and therefore exempt from federal laws such as the ADA.

But Perich's attorney, former acting solicitor general of the United States Walter Dellinger, said her case is not like that of a church that removes a priest from duty, which would be protected under the ministerial exception. In Perich's case, she was

working at a school that was providing services available to the public, under the regulations of the state. "In that situation, it ought to be governed by the same rules," Dellinger said.

"We know that under *U.S. v. Lee*, an Amish employer has to comply with the Social Security laws," Dellinger said. But the way Hosanna-Tabor defended firing Perich relies on interpreting the ministerial exception to allow it to fire "without recourse any employee who called noncompliance to the attention of the (Equal Employment Opportunity Commission)," which oversees the ADA.

Congress has set up ministerial exceptions for the areas where a church's internal systems should take precedence, but most courts have held that such exceptions do not apply to teachers, he said.

In a lively debate involving nearly every member of the court, the justices batted back and forth questions over how far protections for a church's First Amendment rights may go and whether it is ever appropriate for the government to try to decide who is legitimately a minister.

"Different churches have different ideas about who's a minister," Chief Justice John Roberts said to Laycock. "There are some churches who think 'all of our adherents are ministers of our faith.' Now, does that mean that everybody who is a member of that church qualifies as a minister because that is part of the church's belief?"

"I don't think it means that," Laycock said. "I think courts have some capacity to look at what this employee is actually doing, and if he is not performing any of the functions of a religious leader, if he is not teaching the faith, then"

But what if a church considers every member "a witness to our beliefs," asked Roberts.

Laycock responded that "the fact that you're expected to witness to the faith when the occasion arises doesn't make you a minister." But Perich clearly is considered a minister by the Evangelical Lutheran Church and therefore was subject to the church's policies for not seeking outside intervention in the dispute over her job.

Arguing for the U.S. Solicitor General's office, assistant solicitor Leandra Kruger

told the justices that “the freedom of religious communities to come together to express and share religious belief is a fundamental constitutional right. But it’s a right that must also accommodate important governmental interests in securing the public welfare.” She said there was no infringement of Hosanna-Tabor Church’s freedom “by making it illegal for it to fire a fourth grade teacher in retaliation for asserting her statutory rights.”

Kruger engaged in a lengthy exchange with Justices Antonin Scalia, Samuel Alito, Stephen Breyer and Elena Kagan over the point at which the government’s interests in making sure certain laws are followed takes precedence over how a church defines the ministerial role of its employees.

“I think that there is an important distinction to be made between the government’s general interest in eradicating discrimination from the workplace and the government’s interest in ensuring that individuals are not chilled from coming to civil authorities with reports about civil wrongs,” she said.

“The government’s interest in this case is not in dictating to the church-operated school who it may choose to teach religion classes and who it may not,” Kruger said in reply to questions from Scalia. “It is one thing and one thing only, which is to tell the school that it may not punish its employees for threatening to report civil wrongs to civil authorities.”

That interest overrides Hosanna-Tabor’s religious tenet that encourages seeking internal resolution of disputes rather than going to court, she said.

A ruling in the case is expected by the time the court’s term ends in June.

Meanwhile, the court declined to take another case over a religious organization’s employment practices, over World Vision’s firing of three employees who the organization concluded did not believe Jesus Christ was the son of God.

By declining the case, the court left standing a ruling by the 9th U.S. Circuit Court of Appeals that upheld the decision by World Vision to fire Silvia Spencer, Ted Youngberg and Vicki Hulse. The three employees had submitted required statements when hired “describing their ‘relationship with Jesus Christ,’” noted the 9th Circuit

ruling. "All acknowledged their 'agreement and compliance with World Vision's Statement of Faith, Core Values, and Mission Statement.'" "

The three were fired in 2006 when World Vision, a Christian humanitarian organization, "discovered that the employees denied the deity of Jesus Christ and disavowed the doctrine of the Trinity," which was incompatible with World Vision's doctrinal beliefs.

In an August 2010 ruling, the court found that as a primarily religious organization World Vision qualifies for the ministerial exception to employment laws and may require its workers to hold religious beliefs that are compatible with its mission.