The U.S. Supreme Court has decided to hear a Sixth Circuit case about when the First Amendment's religion clauses bar a ministerial employee from bringing an employment-related suit.

29. March 2011 By Aaron Lindstrom

Yesterday the U.S. Supreme Court granted a petition for a writ of certiorari to review the Sixth Circuit's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. The case will be the first time the U.S. Supreme Court will address the "ministerial exception," although the doctrine has already been recognized by 12 of the 13 U.S. Courts of Appeal (the Federal Circuit does not have jurisdiction over cases that could present the issue). The doctrine arises from the Constitution's Religion Clauses and bars most employment-related lawsuits brought against religious institutions by employees who play an important religious role. In the words of Professor Richard Garnett of Notre Dame Law School, this case is "the most important religious-freedom case in 20 years."

The basic principle of the ministerial exception is that the choice of a minister who will speak for a church or other religious institution is a religious exercise that the government should not interfere with or become entangled in. In the case that will go before the U.S. Supreme Court, a teacher at a private Christian school brought an Americans with Disabilities Act claim against the school after she was terminated. The school contended that First Amendment barred the teacher's ADA claim because she was a ministerial employee: not only was she a commissioned minister, her duties included teaching a religion class four days a week, leading her class in prayer three times a day, and integrating faith into all subjects she taught. The Sixth Circuit, however, concluded she was not a ministerial employee because she spent only 45 minutes per day on what the Sixth Circuit deemed to be religious topics and spent the remaining 6 hours and 15 minutes on what the court deemed to be secular topics. The Sixth Circuit took the teacher's admission that she could only recall two instances in her career where she had introduced religion into secular classes as a point in her favor.

This case is also of interest because the Michigan Court of Appeals recently confronted a similar situation, in *Weishuhn v. Catholic Diocese of Lansing*, 287 N.W. 2d 211 (Mich. Ct. App. 2010), where a teacher at a Catholic elementary spent most of her time teaching math classes but also taught religion. (See here for our prior post on this case.) The Court of Appeals reached the opposite conclusion as the Sixth Circuit and held that she was a ministerial employee. In the view of the Michigan Court of Appeals, "teaching 'secular' classes is not necessarily 'purely secular' in the context of religious schools." A petition for a writ of certiorari was also filed to urge the Supreme Court to review *Weishuhn*, but, while the Court has scheduled that case for discussion at four of its internal conferences, the Court has not yet granted or denied that petition.

For another recent article about this case, see the Volokh Conspiracy post here.

Disclaimer: WNJ represented *amici curiae* who supported the successful petition for a writ of certiorari.