Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC: U.S. Supreme Court Reaffirms The Ministerial Exception

January 11, 2012 by Matthew Nelson

This morning, in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the United States Supreme Court reaffirmed the ministerial exception under the Establishment and Free Exercise clauses of the Constitution. The decision unanimously overturned a decision by the Sixth Circuit that a Lutheran school's commissioned teacher was not a "minister" for purposes of the ministerial exception. The Supreme Court's decision vindicates religious organizations' constitutional right to make decisions about who will perform ministerial functions free from governmental interference.

The case arose from a dispute between the Hosanna-Tabor school and its "commissioned teacher," Cheryl Perich. Perich took a medical leave related to her narcolepsy. When she wanted to return, the school indicated that it no longer had a position available for her and asked her to resign. Perich threatened legal action. The school concluded that Perich's conduct violated Lutheran doctrine and ended her employment.

Perich and the EEOC sued, claiming that the school had retaliated against Perich in violation of the Americans with Disabilities Act. The school moved to dismiss the lawsuit, claiming that plaintiffs were asking the court to impose an unwanted minister upon the school in violation of the First Amendment. The district court agreed and dismissed the case.

On appeal, the Sixth Circuit reversed. It concluded that Perich performed too many secular duties to be considered a minister. At roughly the same time, the Michigan Court of Appeals concluded that a teacher in a Roman Catholic school was a ministerial employee and dismissed the teacher's lawsuit. The decisions created a conflict between the state and federal courts in Michigan.

The United States Supreme Court granted certiorari. In the Supreme Court, the Obama administration not only sought affirmance of the Sixth Circuit's decision, but also argued that there was no ministerial exception to employment laws under the religion clauses, and that the total protection granted to religious-employment decisions was provided by freedom from association.

The Supreme Court unanimously reversed the Sixth Circuit and rejected the Obama Administration's position that the religion clauses do not provide protection of religious employment decisions. The Court explained,

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the election of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments.

The Court further rejected the Sixth Circuit's attempt to apply the ministerial exception by measuring the time spent on actual ministerial activities. The Court noted that "[t]he issue before us, however, is not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant in assessing that employee's status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed . . . ."

Disclaimer: Warner Norcross & Judd LLP filed an amicus brief in support of the prevailing Lutheran school on behalf of the Council of Christian Colleges and Universities.