

# Supreme Court to weigh churches' hiring rights

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WASHINGTON (RNS) The Supreme Court on Wednesday (Oct. 5.) will hear one of most important religion cases in decades, centered on the degree to which religious institutions should be exempt from anti-discrimination laws.

The case started at a Lutheran elementary school in Michigan where a teacher claimed she was fired in violation of the Americans With Disabilities Act.

The question before the justices concerns the "ministerial exception," a 40-year-old legal doctrine that protects churches and other religious institutions from government interference in their employment decisions.

Few would dispute that a religious congregation should be unfettered when it chooses to hire or fire clergy. But what about other church employees?

"Advocates for the ministerial exception argue that religious institutions, in their hiring and firing, should be regulated as little as possible," said Ira C. Lupu, a professor at The George Washington University School of Law who specializes in church-state cases.

"On the other side are those concerned that a particular group is cast outside the various protections of civil rights laws."

Cheryl Perich taught secular subjects and religion at Hosanna-Tabor Lutheran School in Redford, Mich., and signed a contract as a "called teacher," charged with advancing the religious doctrines of the congregation that operated the school.

Her dispute with the school, which is now closed, began after she fell ill in 2004, and took several months off to treat a chronic sleep disorder. The congregation hired another teacher to take her place, and asked Perich to resign. Perich, who had permission from her doctor to return to work, threatened to sue and the congregation then voted to fire her.

That employment decision was its prerogative, said attorney Luke Goodrich, of the Becket Fund for Religious Liberty, which is representing the church.

"The purpose of the ministerial exception is to protect the right of religious institutions to choose their religious leaders," he said.

Because Perich was charged with imparting religious doctrine to her students as a "commissioned minister," the ministerial exception applies, he said.

Perich lost her first suit in federal court in 2008, but the Cincinnati-based 6th U.S. Circuit Court of Appeals ruled in her favor last year. Now the Supreme Court will consider the case, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

The American Civil Liberties Union, which co-wrote a brief supporting the government's side in the case, hopes the justices will narrowly interpret the ministerial exception.

"While faith communities surely have the right to set religious doctrine and decide which ministers best advance their religious beliefs and practices, they shouldn't get a blank check to discriminate or retaliate against their employees," said Daniel Mach, director of the ACLU's Program on Freedom of Religion and Belief.

Perich should not fall under the ministerial exception, Mach said, because her primary job was as a school teacher, not a minister.

"There's ample evidence in the case that Perich was fired because of her disability and the assertion of her legal rights -- and not for any religious or doctrinal reasons," he said.

One of the toughest questions facing the court, experts say, is whether the government should be allowed to decide which employee duties are "religious," and which are not.

The high court has never ruled on the ministerial exception, and its decision will guide lower courts on whether to weigh more heavily the rights of religious institutions or their employees.

"I'll tell you what makes this case really interesting," said Lupu. "The last time the Supreme Court heard a case about internal church disputes was more than 30 years ago. This makes for a certain amount of unpredictability."

Lupu said he'll be watching the court's three female justices, who he says are not likely to favor a broad interpretation of the ministerial exception because it could adversely affect the many women who teach at religious schools. The church, then, would have to convince five of the six male justices to see the case its way.

"A new and narrow interpretation of the ministerial exception is certainly possible," Lupu added. "That would alter employment relations in virtually every religious institution in the U.S."