

# Supreme Court hears religious hiring case

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WASHINGTON (RNS) The U.S. Supreme Court heard arguments Wednesday (Oct. 5) on religious exemptions to employment law, and advocates for greater church autonomy say several justices seemed to be on their side.

Those justices focused on the motivation for a Michigan religious school to fire teacher Cheryl Perich, and expressed concern about a more robust role for the government in the internal affairs of churches, synagogues and other religious groups.

Chief Justice John Roberts, Justice Samuel Alito and others worried that narrowing a church's right to hire and fire would violate the constitutional doctrine of the separation of church and state.

"We are very encouraged," said Douglas Laycock, a University of Virginia law professor who argued on behalf of Hosanna-Tabor Evangelical Lutheran Church and School. "The court was openly skeptical of much of the (government's) position."

Attorneys for Perich, who taught secular subjects and religion at the now-closed school, argued that she was fired for threatening to sue under the Americans with Disabilities Act, but said church and school officials used her religious duties as a pretext for firing her.

"All that needs to be decided has nothing to do with religion," said former Solicitor General Walter Dellinger, who argued on behalf of the government and the Equal Employment Opportunity Commission.

The church, meanwhile, argued that Perich was a special kind of teacher -- a "commissioned minister" -- and said she was fired for not upholding her religious responsibilities, including a mandate to solve disputes within the church.

Dellinger acknowledged that church leaders cited the Apostle Paul's letter to the Corinthians in firing Perich, but said the government still has a responsibility to ensure equal treatment for employees.

"It's not for the civil courts to enforce First Corinthians," Dellinger said. "It's for the civil courts to enforce the anti-discrimination and anti-retaliatory provisions of the Americans with Disabilities Act."

The guarded optimism of the church's lawyers and religious groups contrasted to the concerns raised by the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State.

"I'm afraid this court will use a very weak claim of religious liberty to sabotage the legitimate civil rights interests of employees," Lynn said after the court heard the case. "Sadly, too many religious institutions seem to want to use often vague claims as a pretext to engage in shameful acts of job discrimination based on race, gender or disability."

At the heart of the case lies the question of the boundaries of the "ministerial exception," a 40-year-old doctrine that allows religious

institutions some exemptions from employment law. Under the ministerial exception, for example, a Roman Catholic church could not be sued successfully for gender discrimination for refusing to hire a female priest.

Justices questioned why the government would want to get in the business of deciding who is or isn't a religious employee and therefore subject to the ministerial exception. Alito asked if the government was minimizing the protections from government interference afforded to religious institutions.

"There, black on white in the text of the Constitution, are special protections for religion. Are you saying it makes no difference?" Alito asked government attorney Leandra R. Kruger, who argued the case with Dellinger.

The church holds that Perich flouted a religious doctrine against taking internal disputes outside the church. Roberts asked why the government would question whether that doctrine was important to those who fired her.

"You're making a judgment about how important a particular belief is to a church," Roberts told Kruger. "You're saying, 'We don't believe the Lutheran Church when it says that this is an important and central tenet of our faith.'"

But other justices expressed sympathy for the argument that society has a compelling interest in protecting the rights of all employees -- whether they work for a religious institution or not -- to petition the government for help.

"How about a teacher who reports sexual abuse to the government and is fired because of that reporting?" asked Justice Sonia Sotomayor. "Doesn't society at a certain point have a right to say certain conduct is unacceptable, even if religious?"

Outside the court, religious groups noted the importance of the justices' decision to all religious institutions.

"What's at stake in this case is the ability of religious organizations in general, and religious schools in particular, to be able to hire the people that will teach the faith and raise the next generation," said Nathan J. Diament, Washington director for the Union of Orthodox Jewish Congregations of America.

But to Perich, her six-year-old dispute with her former employer is an entirely different matter. "My situation really had nothing to do with religion," she told reporters outside the court.

"I can't fathom how the Constitution would be interpreted in such a way as to deny me my civil rights as an elementary school teacher," she said. "I sure hope the court agrees."