

# Justices uphold church hire-fire rights

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The U.S. Supreme Court has unanimously thrown its support behind a church school that fired a teacher, using a widely watched church-state case to bolster a legal doctrine that exempts religious institutions from some civil rights laws.

Many religious groups heralded the January 11 ruling as a firm assertion of religious freedom that keeps personnel decisions about religious employees where they should be: within a church, synagogue or mosque.

Nevertheless, the 9-0 ruling supporting a Lutheran Church-Missouri Synod church and school in Michigan drew different reactions from two leading groups concerned with First Amendment issues.

"It is a helpful decision explaining the important and unique way that the Constitution protects religious organizations in matters of internal governance," said K. Hollyn Hollman, general counsel for the Baptist Joint Committee.

The BJC filed an amicus brief in the case, urging that the High Court explicitly recognize the so-called ministerial exception, a principle commonly recognized in lower courts. The National Council of Churches and the National Association of Evangelicals joined the BJC in its brief.

Americans United for Separation of Church and State, however, said the Supreme Court set the bar far too high for employees of religious institutions who seek redress against discrimination.

"The really terrible thing about this decision is that if you fire someone

and religion is just a pretext, it can't be addressed by courts," said Barry W. Lynn, executive director of Americans United. "It's just a gigantic new exception, a new loophole to the civil rights law for religious groups that will not be shut in a very long time—if ever."

The

case of the now-closed Hosanna-Tabor Evangelical Lutheran Church and School in Redford, Michigan, revolved around Cheryl Perich. She had been elevated by the Lutheran church that ran the school to a "called teacher" position, one with some religious responsibilities. Though most of her duties were secular, Perich spent part of each day teaching religion and sometimes led chapel services.

Diagnosed with a sleep

disorder, Perich took a leave of absence in 2004 and was replaced by another teacher. Cleared by her doctors to return to work, the church refused to reinstate her.

Perich filed a complaint with the Equal

Employment Opportunity Commission, arguing that the school was hiding behind its religious protections to ignore the Americans with Disabilities Act. The EEOC ruled for Perich, but she lost a lawsuit against the school in federal court in 2008.

The school

successfully argued that the doctrine of ministerial exception gave it broad hiring and firing powers over all religious employees, even if they were engaged in nonreligious activities. Lawyers for the school maintained that the Lutheran tradition requires that disagreements within the church be settled within it and that Perich had flouted this requirement by going to court.

Perich appealed, and in 2010 the

Cincinnati-based Sixth U.S. Circuit Court of Appeals ruled in her favor. The Supreme Court, in an opinion written by Chief Justice John Roberts, gave the final victory to the church, grounding the decision in the First Amendment's guarantees of free exercise of religion and a prohibition on government establishment of religion. Justices Clarence

Thomas, Samuel Alito and Elena Kagan filed concurring opinions.

"The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission," Roberts wrote. "The First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way."

Matthew C. Harrison, president of the 2.3-million-member Lutheran Church–Missouri Synod, which has many parochial schools, said the denomination was "delighted" that the Supreme Court confirmed "a critical religious liberty in our country."

"The court hasn't spoken this clearly on a church-state matter in almost 20 years," said Richard Garnett, a law professor at the University of Notre Dame who wrote an amicus brief on the case in support of the church and school. "This is bedrock," Garnett continued. "All the justices came together to say if religious freedom means anything, it means governments can't interfere with religious institutions' decisions on who is going to be their minister or teacher." —RNS, ABP