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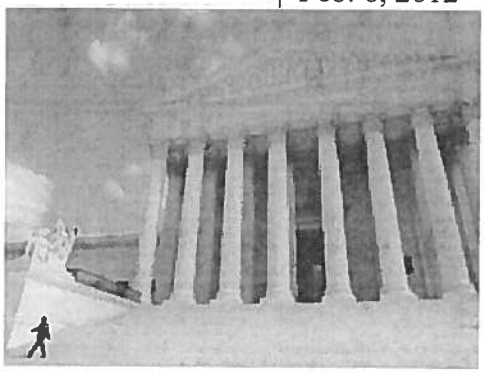


A security guard walks the steps of the U.S. Supreme Court in Washington. (CNS/Reuters/Larry Downing)

ANALYSIS

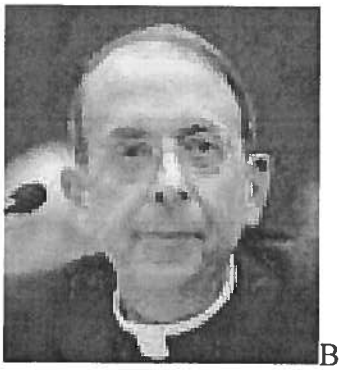
The Supreme Court of the United States, in its *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC* opinion, upheld the "ministerial exception" that the U.S. circuit courts had long recognized. Basically, this exception states that churches cannot be sued over employment decisions regarding those whom the church hires to "preach their beliefs, teach their faith and carry out their mission."

The Supreme Court's Jan. 11 decision is rooted in both the free exercise and the establishment clauses of the First Amendment, and is very fact-specific to the *Hosanna-Tabor* case. The decision gives no clear rule as to who is or is not covered by the ministerial exception. But clearly, from the language of the court, two things are required: The employer must be a church, and the employee must be an agent of the church, hired by the church to preach the church's beliefs, teach its faith and carry out its mission.

Cheryl Perich had been a teacher at Hosanna-Tabor Evangelical Lutheran School in Redford, Mich., when she went on sick leave in 2004. When she tried to return to work, administrators urged her to quit. The school fired her when she threatened to sue under the Americans with Disabilities Act. Hosanna-Tabor argued that because Perich was a "called" minister of the church, the decision to fire her was protected by the First Amendment.

Obviously, Hosanna-Tabor Evangelical Lutheran Church and School qualified as a church employer. The church owned and operated the school where Perich taught. And clearly, given her duties to lead prayer and instruct in religion at the church's grade school, Perich was teaching the church's beliefs and carrying out its ecclesiastical mission. This qualified her as a minister of the church in the court's

eyes. And so the ministerial exception applied. The state could not, through agencies or the courts, tell a church who to hire or not hire as a minister.


Bishop William Lori of Bridgeport, Conn., chair of the U.S. bishops' Ad Hoc Committee for Religious Liberty, hailed this decision as a great day for the First Amendment, for religious freedom, and he is right about that. But this case's application to our own church is already being distorted, not as a basis of religious liberty, but as a justification for the arbitrary use of religious authority.

Professor Douglas Laycock, who argued the case for Hosanna-Tabor Church in the Supreme Court, was asked how the decision affected professors at Catholic universities, such as the University of Notre Dame. His answer was chilling: "If he teaches theology, he's covered. If he teaches English or physics or some clearly secular subjects, he is not covered."


Laycock, one of the nation's finest constitutional scholars, but who is not Catholic, had to be speaking in the broad Protestant sense of church versus state when he gave his answer. The Catholic church in its structures and in its conception of ministry is multilayered and much more nuanced than that, however.

Let's start with Catholic universities. They are not churches or even agencies of the church. The U.S. bishops' own statement, implementing *Ex Corde Ecclesiae* in the United States, clearly says that Catholic universities enjoy institutional autonomy and that their governance is internal to the institution.

And Catholic theology professors are not agents of the church, hired by the church to preach the church's beliefs, teach its faith, and carry out its mission. That would be catechism, which is not the same, nor should it be, as the academic study of Catholicism on a college campus.

Even those Catholic college professors who have the *mandatum* to teach Catholic theology, described by Canon 812 of the 1983 Code of Canon Law, are not thereby agents of the church. Again, the U.S. Conference of Catholic Bishops, in its norms implementing *Ex Corde Ecclesiae*, says that the

mandatum "should not be construed as an appointment, authorization, delegation or approbation of one's teaching by church authorities."

How about other workers in the Catholic church? Are they now driven from the civil tribunals because their employer is a church and their employer classifies them as "ministers"? In Catholic parlance, we have ministers of music, ministers of social work, ministers of this and that. Some Catholic universities now refer to their resident assistants as pastoral ministers! This puts me in mind of what Pope John Paul II says in *Christifideles laici*: "Pastors ... can entrust to the lay faithful certain offices and roles that are connected to pastoral ministry. ... However, *the exercise of such tasks does not make pastors of the lay faithful*: in fact a person is not a minister simply in performing a task, but through sacramental ordination" (emphasis in original). So we can call such folks ministers in the church, but that does not make them so, and the church could not credibly argue that in a court of law.

Let's agree with Lori and run our religious liberty flag up the pole and salute it. But let's not permit an overly broad and unwarranted interpretation of *Hosanna-Tabor* to turn this banner of religious liberty into a baton of religious authority, going where the court's writ does not warrant, into the theology classrooms of American Catholic colleges and universities, into the everyday church workplace where the term "minister" is used in its broad, and not its true ecclesiastical sense.

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