High Court: Catholic Teachers Deemed 'Ministers;' Bars Discrimination Suits

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By **Jeffrey Campolongo** | July 23, 2020

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In recent years the U.S. Supreme Court has sent a clear message when it comes to religious freedom. Whether it comes to a cake baker's decision to deny service to a gay couple (see *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. __ , 138 S. Ct. 1719, 201 L. Ed. 2d 35) (2018)), exemptions for employers with religious or moral objections to birth control for workers (see *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. ___ (2020)), and now giving faith-based institutions wide leeway to hire and fire employees whose jobs are tinged with religious

duties (see *Our Lady of Guadalupe School v. Morrissey-Berru* 591 U.S. ___ (2020)). In each of these instances the high court has sided with religious liberty over perceived or alleged discrimination. Given that the free exercise clause appears in the very first amendment to the Bill of Rights, it should come as no surprise that anti-discrimination laws would give way to religious liberty.

In 2012, the Supreme Court issued its first decision on a judicial doctrine known as the "ministerial exception," which essentially prohibited ministers from suing faith-based organizations, including schools and churches for employment discrimination. See *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U. S. 171 (2012). At issue in that case was an employment discrimination claim brought by an elementary school teacher, Cheryl Perich, against the religious school where she taught. Adopting the so-called "ministerial exception" to laws governing the employment relationship between a religious institution and certain key employees, the Supreme Court found relevant Perich's title as a "minister of religion, commissioned," her educational training, and her responsibility to teach religion and participate with students in religious activities.

The court declined to entangle itself in employment disputes involving employees holding certain important positions with churches and other religious institutions. Because Perich was a minister who taught religion, the court declared that the independence of religious institutions in matters of "faith and doctrine" is too closely linked to independence in what the court has termed " 'matters of church government.'" Perich's case was dismissed and the ministerial exception was given life.

For almost a decade following the *Hosanna-Tabor* decision, cases involving religious institutions turned on whether the affected employee held a specific title and was a spiritual leader within a congregation such that he should be considered clergy. The more the leader was involved in a leadership role distinct from that of most of the organization's members, someone in whom "the members of a religious group put their faith," or someone who "personifies" the organization's "beliefs" and "guides it on its way," the more the ministerial exception would apply. It was a very fact-based, context-driven, analysis-laden approach. When applied, it was to be done so very narrowly and so as not to disenfranchise all employees of a religious organization. To that end, it was widely recognized that lay faculty, even those who teach religion at church-affiliated schools, are not "ministers." See *Geary* v. *Visitation of Blessed Virgin Mary Parish School*, 7 F. 3d 324 (1993).

In *Our Lady of Guadalupe School v. Morrissey-Berru* the high court narrowed the scope of possible lawsuits even further by dismissing the discrimination claims of two teachers at Catholic elementary schools in southern California. The teachers were not ordained ministers and held no leadership titles or roles. The Catholic schools nonetheless argued that the ministerial exception applied because the teachers "played a key role in teaching religion to their students."

The first plaintiff, Agnes Morrissey-Berru taught at Our Lady of Guadalupe School for nearly two decades before she was told that her contract would not be renewed. She was in her 60s when she learned that she was being let go. She alleged that it was due to age discrimination. The school countered that her termination was due to performance issues. Notably, the school did not assert a religious reason for the termination. Morrissey-Berru's employment contract and benefits classified her as a lay teacher. According to court documents, at no time during her employment did Morrissey-Berru "feel God was leading her to serve in the ministry," nor did she "believe she was accepting a formal … call to religious service by working at Our Lady of Guadalupe as a fifth- and sixth-grade teacher."

The second plaintiff, Kristen Biel, sued St. James School when the school failed to renew her contract after she disclosed that she was being treated for breast cancer. Biel believed that her termination was due to disability discrimination under the American with Disabilities Act. Biel's employment contract identified her position as "Grade 5 teacher." Per the opinion, Biel joined her students once a month in the school's multipurpose room for Mass, which were always officiated by a Catholic priest or a nun. Biel's "sole responsibility" during liturgy was "to keep her class quiet and orderly." She had no formal religious training or expertise, nor did the school require teachers to have experience, training or schooling in religious pedagogy.

Both teachers filed federal lawsuits alleging discrimination. Both teachers had their cases dismissed by the district court due to the ministerial exception. The U.S. Court of Appeals for the Ninth Circuit reinstated both teachers' lawsuits reasoning that the ministerial exception normally applies when an employee plays a "religious leadership" role, but that Biel and Morrissey-Berru played a more limited role, mostly "teaching religion from a book."

To determine whether the ministerial exception should apply in this context, Supreme Court Justice Samuel Alito declared that a variety of factors are important. Whether the teacher is labeled a "minister" was merely one factor to consider, particularly because some faiths do not use that title or have formal organizational hierarchies. "What matters, at bottom, is what an employee does." In the case of Morrissey-Berru and Biel, Alito wrote that there is "abundant" evidence that both women "performed vital religious duties." While they may not have held the title of "ministers," the "ministerial exception" applied nonetheless because "their core responsibilities as teachers of religion were essentially the same."

Justice Sonia Sotomayor took great issue with this narrow interpretation and issued a scathing dissent, joined by Justice Ruth Bader Ginsburg. The ministerial exception, when applied to lay teachers and employees "gives an employer free rein to discriminate because of race, sex, pregnancy, age, disability, or other traits protected by law when selecting or firing their 'ministers,' even when the discrimination is wholly unrelated to the employer's religious beliefs or practices." An employer need not cite or possess a religious reason at all and teachers could be "fired for any reason," even though they "taught primarily secular subjects, lacked substantial religious titles and training, and were not even required to be Catholic."

The slippery slope envisioned by Sotomayor as a result of this decision could extend to "countless coaches, camp counselors, nurses, social service workers, in-house lawyers, media-relations personnel and many others who work for religious institutions." Basically, any employee of any religious organization could be fired for a discriminatory reason so long as the organization thinks its employees play an important religious role.

At this point, it seems apparent that working for a religious organization, be it a school, church or nonprofit, means the employment relationship is truly "at-will." No remedy exists to combat outright discrimination when the ministerial exception stands in the way. The irony is that this does not feel like a very religious principle. For far too many years religion was used to justify racism, white supremacy, bigotry, segregation and hate. Allowing such hate to foment in the name of religious liberty seems antithetical to the notion that all men (and women) are created equal and endowed by our Creator with certain inalienable rights.

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