Church Autonomy Versus Civil Rights

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Church autonomy versus civil rights

Can a parochial school discriminate against a disabled teacher? The answer depends on how the Supreme Court decides a case being argued before it this Wednesday.

To understand the case, it's important to recognize that federal law is generally committed to ridding the workplace of invidious discrimination. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin. And the Americans with Disabilities Act of 1990 (the ADA) forbids discrimination on the basis of disability.

Things get complicated, however, when these laws are applied to religious institutions. Surely, for instance, the government cannot forbid a Baptist church from discriminating on the basis of religion when hiring its pastor.

Anticipating this problem, Congress exempted religious organizations from the prohibition on religious discrimination. But this statutory exemption applies only to religious discrimination, not to other forms of discrimination based on race, gender, or disability.

Thus, the ADA's legislative history gives an example of a Mormon organization that "wishes to hire" only Mormons for certain jobs. The example says that if a disabled non-Mormon applies for the job, the organization may refuse to hire him because he's not a Mormon. But if two Mormons apply for the job and one has a disability, the organization may not discriminate against the disabled applicant because of his disability.

This legislative scheme strongly suggests that a parochial school may not discriminate against a disabled teacher. But the analysis is complicated by the fact that constitutional concerns have led lower courts to give religious institutions an additional layer of immunity from anti-discrimination laws.

This constitutionally based exemption – called the "ministerial exception" – applies most clearly to employment decisions regarding a religious institution's spiritual leader. Courts recognize that the spiritual leader is the "lifeblood" of a religious institution and the "chief instrument by which the church seeks to fulfill its purpose."

The ministerial exception acknowledges that the government has no business telling religious institutions whom they may hire as their spiritual leaders. Indeed, any government attempt to regulate this decision would violate the First Amendment principle of separating church and state.

The Supreme Court has yet to weigh in on the ministerial exception, but lower courts generally agree that the doctrine applies to employment decisions regarding clerical leaders like ministers or rabbis. So, even if federal law does not expressly exempt the Catholic Church from gender anti-discrimination rules, the church can still discriminate on the basis of gender when choosing priests.

Lower courts also generally agree that the ministerial exception does not apply to lower-level employees, like secretaries and janitors, whose functions are not closely tied to an organization's religious mission. Consequently, religious institutions must abide by the anti-discrimination laws in dealing with these employees.

It's less clear, however, whether the ministerial exception should apply to parochial school teachers. On the one hand, teachers, like ministers, often lead students in prayers and provide religious instruction to students. So perhaps the ministerial exception should apply.

On the other hand, many parochial school teachers spend most of their days teaching secular subjects like math and history. Since their responsibilities largely mirror those of teachers in secular private schools, maybe they should receive the same anti-discrimination protection as the secular school teachers.

In the case before the Supreme Court, the teacher taught at a K-8 Lutheran day school. She taught math, language arts, social studies, science, gym, art and music. But she also taught short religion classes four days a week, attended chapel services with her students, and led her class in short prayers three times a day. She was terminated after being diagnosed with narcolepsy even though her doctor says medications allow her to work without any restrictions.

The federal court of appeals concluded that the ministerial exception did not apply because the teacher's primary function was to teach secular subjects.

The school insists the teacher was a ministerial employee – that "she was the Church's primary means of communicating the faith to her students." It therefore contends that the school's employment decisions are immune from federal anti-discrimination laws.

In deciding this case, the Supreme Court will have to navigate between the competing values of respecting church autonomy and protecting the disabled from discrimination. Certainly, government intrusion into religion is unsettling. But should our desire to avoid this intrusion justify giving religious institutions unbridled discretion to discriminate against disabled employees?

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