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U.S. Supreme Court strengthens church autonomy doctrine

By: Special to The Daily Record Jared Cook August 20, 2020 0

Jared K. Cook (Provided photo)

Last month, in *Our Lady of Guadalupe School v. Morissey-Berru*,[1] the United States Supreme Court decided two Catholic schools were exempt from employment discrimination claims from teachers they had terminated. This decision was a follow-up to the 2012 *Hosanna-Tabor* decision, in which the court recognized the "ministerial exemption" — a judicial doctrine that exempts religious institutions from employment discrimination claims by ministers.[2]

One of the teachers in *Guadalupe* asserted age discrimination when she was replaced by a younger teacher. The other asserted disability discrimination when she was discharged after requesting a leave of absence to receive treatment for breast cancer. The Court, in an opinion by Justice Alito, held that the ministerial exemption applied because the teachers performed "vital religious duties," such as leading their classes in prayer, attending mass with their classes, and teaching religion, alongside other secular classes.

A free exercise decision?

But one puzzling thing about this case, if we are to think of it as a free exercise case, is that neither school claimed that it had discharged the teacher as an exercise of its religious beliefs. Instead, they both schools claimed that their decision was due to poor performance: difficulty in administering a new literacy program in one case, and failure to

observe planned curriculum and keep classroom order in the other. How does a special dispensation to engage in employment discrimination, even when it is undisputed that there is no religious reason for doing so, advance the free exercise of religion?

The answer is that the ministerial exemption is not just a free exercise doctrine. It is instead an extension of the church autonomy doctrine, an ancient common-law doctrine that has more to do with the proper limits of judicial power than with the free exercise of religion per se.

The church autonomy doctrine

Under the church autonomy doctrine — sometimes called the ecclesiastical abstention doctrine, or more commonly, the religious question doctrine — internal church decisions such as decisions on matters of church teaching or selection of ministers, are unreviewable by common law courts.[3]

The doctrine has its origins in medieval England, when the division between ecclesiastical courts and common law courts meant that common law courts deferred to the decisions of church courts on matters within their jurisdiction.[4] The Supreme Court first applied it in *Watson v. Jones*, one of many church property cases that arose during the Civil War. In *Watson*, a Presbyterian church in Louisville, Kentucky, split into pro-slavery and anti-slavery factions, with both factions claiming to be the original church and therefore the owner of church property. The Court held that courts had no power to decide the disputed religious questions and that they had to defer to the decisions of church authorities.[5]

The Court applied the doctrine as a matter of pre-Erie general federal common law. But in the 20th century, the Court began to recast the doctrine as a principle of constitutional law under the First Amendment.[6] (One important consequence of this doctrine having been remade as a constitutional rule is that the ministerial exemption

applies not only to federal antidiscrimination statutes, but to state antidiscrimination statutes as well, like New York's Human Rights Law.[7])

As a result, the Supreme Court today continues to describe the church autonomy doctrine as a free exercise doctrine. But when the Supreme Court reaffirms that the ministerial exemption applies even when there is no religious reason for the employment decision at issue, that suggests that free exercise is at best an incomplete explanation for the ministerial exemption.[8]

The ministerial exemption is therefore best thought of not purely as a free exercise doctrine, but as an extension of the common-law church autonomy doctrine. The issue is not that firing a teacher from a religious school is always an exercise of religion. The issue is, rather, more akin to a jurisdictional concern that such an employment decision is "the church's alone,"[9] because reviewing it is outside of the proper exercise of judicial power to begin with.

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[1] No. 19-267 (July 8, 2020).

[2] See *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012).

[3] See, e.g., Jared Goldstein, "Is there a Religious Question Doctrine? Judicial Authority to Examine Religious Beliefs and Practices," 54 Cath. U. L. Rev. 497 (2005).

[4] See *id.* at 504-09.

[5] See *Watson v. Jones*, 80 U.S. 679, 733 (1871).

[6] E.g., *United States v. Ballard*, 322 U.S. 78, 86 (1944); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 114-16 (1952).

[7] E.g., *Redhead v. Conference of Seventh-Day Adventists*, 440 F. Supp. 2d 211, 224 (E.D.N.Y. 2006).

[8] *Hosanna-Tabor*, 132 S. Ct. at 709.

[9] *Id.*

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