Written by **Dave Bohon** on January 12, 2012

Supreme Court Issues Landmark Ruling for Religious Freedom

The case, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, centered on the right of a Michigan elementary school, operated by a Missouri Synod Lutheran church, to dismiss an instructor who wanted to return to work after a disability leave for narcolepsy. The teacher filed a claim with the Equal Employment Opportunity Commission (EEOC), charging that in firing her, the church had violated the Americans with Disabilities Act.

In the first-ever instance of the High Court applying the ministerial exception rule to federal anti-discrimination statutes, the justices ruled that religious workers may not sue on the basis on job discrimination, determining that religious institutions rather than the courts are the best judge of whom they should employ. “We agree that there is such a ministerial exception,” wrote Chief Justice John Roberts in the unanimous opinion. “Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.”

Roberts noted that dictating whom religious institutions may hire or fire runs afoul of both religion clauses of the First Amendment, violating the free exercise clause by obstructing the “group’s right to shape its own faith and mission through its appointments,” and violating the establishment clause by giving “the state the power to determine which individuals will minister to the faithful.”

Roberts wrote that 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.”

However, even as the justices issued their landmark decision, Roberts wrote that they were reluctant “to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us to conclude, in this our first case involving the ministerial exception, that the exception covers [the

teacher in this specific case], given all the circumstances of her employment." Roberts added that there would be "time enough to address the applicability of the exception to other circumstances if and when they arise."

That caveat from Roberts means that future rulings will likely flesh out which employee relationships fall under the ministerial exception clause, and which do not. Rick Garnett, associate dean at Notre Dame Law School, told the Associated Press that there will be "some employee relationships involving religious institutions that are not religious at all, and those are not going to be covered" by the ruling. "But there are going to be some that are religious, even if they are not ordained clergy, and they are going to be covered. The way the court put it was that some employees are essentially involved in the religious mission of the institution and those employees are covered."

In a concurring opinion Justice Clarence Thomas advised that in future cases, lower courts should defer to the judgment of religious organizations as to which persons they think qualify as ministers. "A religious organization's right to choose its ministers would be hollow … if secular courts could second-guess the organization's sincere determination that a given employee is a 'minister,'" wrote Thomas.

And in a separate opinion, Justice Samuel Alito wrote that the ministerial exception should be tailored to apply only to the employee "who leads a religious organization, conducts worship services or important religious ceremonies or rituals or serves as a messenger or teacher of its faith." He added that "while a purely secular teacher would not qualify for the 'ministerial exception,' the constitutional protection of religious teachers is not somehow diminished when they take on secular functions in addition to their religious ones," Alito said.

All in all, legal scholars said the High Court's ruling represented a major victory for churches and religious organizations. "This is a huge win for religious liberty," declared Douglas Laycock, a University of Virginia Law School professor who had represented the church in oral arguments before the Supreme Court in October. He explained to *Christianity Today* that the court "has unanimously confirmed the right of churches to select their own ministers and religious leaders. It has unanimously held that the courts cannot inquire into whether the church had religious reasons for its decisions concerning a minister. The longstanding unanimity in the lower courts has now been confirmed by unanimity in the Supreme Court."

Needless to say, secular groups riding the "separation of church and state" bandwagon were displeased with the verdict. "Clergy who are fired for reasons unrelated to matters of theology — no matter how capricious or venal those reasons may be — have just had the courthouse door slammed in their faces," complained Barry Lynn for the group Americans United for the Separation of Church and State.

By contrast, Luke Goodrich of the Becket Fund, the conservative legal group that represented the church in the case, said the decision sends a clear message: "The government can't tell a church who should be teaching its religious message. This is a huge victory for religious freedom and a rebuke to the government, which was trying to regulate how churches select their ministers."

Mark Rienzi, another Becket Fund attorney and law professor at Catholic University, called the ruling "easily the biggest religious freedom case in the last 20 years. It said very strongly that the Constitution protects religion much more clearly and much more strongly than this administration had argued."

Rienzi noted that while a church's right to choose its own pastor has never been questioned, the Supreme Court also recognized a religious group's right to hire people for other positions as well without government intrusion. The EEOC "argued that only people who stand up on Sunday at a

worship service — only they get protected and everybody else, the government can tell the church what to do," Rienzi said. But the Supreme Court confirmed that "the government has no ability to order a church to re-hire a teacher to teach religion to the children or anything like that. The government has to stay out of that sphere."