Hosanna-Tabor case to test our church-state divide
Richard W. Garnett
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The Supreme Court’s religious-freedom decisions are usually about symbols, speech and spending: war memorial crosses in the desert and Ten Commandments monuments near public buildings, scholarships that allow poor kids to attend parochial schools and funding for “faith-based” social services, Pledge of Allegiance, and so on.

In late March, the justices agreed to review a Michigan job-discrimination case with none of these familiar eye-catching and attention-grabbing features. It does involve, however, fundamental questions about church-state relations and the limits of government authority — questions at the core of the First Amendment’s concerns — and it could prove to be among the court’s most important religious-liberty cases in many years.

Critics sometimes complain that the court’s religion-related decisions bog down in trivia — How close are the reindeer and snowmen to the Baby Jesus in the holiday display? — but this case, Hosanna-Tabor Church v. EEOC, is about a big idea, the “separation of church and state,” that really matters.

The case

In a nutshell, Hosanna-Tabor is a lawsuit brought by Cheryl Perich, a former teacher at a church-run Lutheran grade school who argues that the church violated a federal law against disability-based discrimination when it rescinded her “call” as a “commissioned minister” — and fired her as a third- and fourth-grade teacher, after a disability-related leave of absence.

A federal trial court in Michigan dismissed the teacher’s claim, insisting that the “ministerial” nature of her position and the religious dimensions of the church’s decision made it inappropriate to apply the anti-discrimination law. But the court of appeals disagreed and concluded that her “primary duties” — as a “commissioned minister” at a school that aims to provide a “Christ-centered education” from teachers who “integrate faith into all subjects” — were secular, and not religious.

The court gave little weight to the facts that the teacher led her students in prayer several times a day and taught religion classes four days a week, and instead simply compared the minutes she spent on religious formation with those she spent teaching “secular subjects.”

The Supreme Court should reverse this decision, and it is important to understand why.

For starters, it is well established that a “ministerial exception” to job-discrimination laws prevents secular courts from jumping into religious disputes that they lack the authority to address or the competence to solve. The question in the Hosanna-Tabor case is not so much whether the exception exists — it does, and it should — as how it should be understood and applied.
As the court of appeals recognized, this exception is “rooted in the First Amendment’s guarantees of religious freedom.” Indeed, a religious-liberty promise that allowed governments to second-guess religious communities’ decisions about what should be their teachings or who should be their teachers would be a hollow one.

To be clear, the ministerial exception is constitutionally required and valuable, but it does not rest on assumption that religious institutions and employers never behave badly. Certainly, they do. Its premise is not that churches are somehow “above the law.” They are not, and should not be. Its point is not “discrimination is fine, if churches do it.” It is, instead, that there are some questions secular courts should not claim the power to answer, some wrongs that a constitutional commitment to church-state separation puts beyond the law’s corrective reach, and some relationships — such as the one between a religious congregation and the ministers to whom it entrusts not only the “secular” education but also the religious formation of its members — that government should not presume to supervise too closely.

Out of government’s league

To be sure, not every employee of a religious institution is a “ministerial employee,” and religious institutions — like all employers — have many legal obligations to their employees. Although there are difficult questions to be asked, and many fine lines to be drawn, when it comes to interpreting and applying the First Amendment’s religious-freedom guarantees, it cannot be the role of secular government to second-guess the decisions of religious communities and institutions about who should be their ministers, leaders and teachers, any more than they should review their decisions about the content of religious doctrines.

Last October, many enjoyed a laugh at the expense of Christine O’Donnell, then a candidate for one of Delaware’s U.S. Senate seats, when she questioned the constitutional pedigree of the “separation of church and state.” Her critics were a bit too quick to poke fun. In fact, “separation of church and state” does not appear in the Constitution. Still, and even though it is often distorted and misused, the idea is a crucial dimension of religious freedom. We wisely distinguish, or “separate,” the institutions and authorities of religion from those of government. We do this, though, not so much by building a “wall,” but by respecting the genuine autonomy of these different spheres. We do this not to confine religious belief and practice but to curb the ambitions and reach of governments.

The Gospel reports that Jesus told the Pharisees to “render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s.” In a similar vein, our Constitution tells Caesar that he is only Caesar, and insists that he not demand what is God’s.

Richard Garnett is a professor of law and associate dean at the University of Notre Dame and a senior fellow at the Center for the Study of Law & Religion at Emory University.