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**Supreme Court of the United States**  
**First Presbyterian Church v. Equal Employment**  
**Opportunity Commission**

By Medha Gargeya

**HARVARD MODEL CONGRESS 2012**

**UNITED STATES COURT OF APPEALS**  
**FOR THE FOURTH CIRCUIT**

No. 11-336

FIRST PRESBYTERIAN CHURCH

Plaintiff-Appellee,

versus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Defendant-Appellant

Appeal from the United States District Court  
For Middle District of North Carolina

**Argued: February 6, 2010**

**Decided: April 10, 2011**

Before ZHAO, *Chief Judge*, BIBLARZ, HEBBAR, WENGER, MENSAH, BROOKS, UMANA, SIMMONS, DEB, SCUDERI, CHARLES, SHENAI-NAJIA, CAPODILUPO *Associate Judges*.

**HARVARD MODEL CONGRESS 2012**

ALICE ZHAO, *Chief Justice*, writing for the Court. HEBBAR, BROOKS, WENGER, BROOKS, UMANA, BIBLARZ, CAPODILUPO, CHARLES, and SHENAI-NAJIA, *Associate Justices*, joining:

**OVERVIEW**

This appeal comes to us from the United States District Court of the Middle District of North Carolina. It centers on the ministerial exception, which under the Free Exercise and Establishment clauses of the First Amendment, dismisses employment-related lawsuits against religious organizations by employees performing religious functions. The intention behind the ministerial exception is that it protects religious organizations' First Amendment right to choose its leaders. The



circuits agree that the doctrine applies to pastors, priests, and rabbis. The question presented asks whether the ministerial exception applies to a teacher at a religious elementary school who teaches a complete secular curriculum, but is also a commissioned minister who teaches daily religion classes and regularly leads students in prayer and worship. Can a teacher file a complaint with the Equal Employment Opportunity Commission against a church if unfairly fired? Can the courts entangle themselves in matters of religious practice? We must consider the facts of this case in light of these issues.

### **Facts of the Case**

#### **A.**

Petitioner First Presbyterian Church and School ("the Church") is an ecclesiastical corporation and member congregation of the First Presbyterian Church U.S.A. The Church includes a religious primary school, with grades kindergarten through second grades. The explicit purpose of the school is to "instill Christian values" in youth.

The school has "lay" teachers and "called" teachers. "Lay" teachers are hired by the school board and have a one-year term. "Called" teachers are voted on by the Church congregation and, like the Church pastor, cannot be fired without a sufficient cause. Respondent Rebecca Cartwright was one of the school's "called teachers." To attain the title, she was required to receive university-level training in Presbyterian thought and be deemed as ready for the ministry by the faculty. She was voted on by the congregation to serve as a "called" teacher and was issued the title of a "commissioned minister" as well. She had previously claimed a housing allowance for federal ministers on her federal income taxes. She was also subject to the same employment procedures as the Church pastor.

Cartwright taught a standard first grade curriculum. Cartwright used secular textbooks for teaching secular subjects, including math, language arts, social studies, science, computer skills, physical exercise, art, and music. Cartwright seldom introduced religion when teaching the secular subjects. But beyond her secular curriculum, she taught religion classes three days a week, led students in daily prayer three times a day, and attended chapel services with her students every week. She led the school-wide chapel service three times every year.

#### **B.**

Cartwright was unable to go to work during half the 2006-2007 school year when her doctor diagnosed her with narcolepsy. When it became unclear as to whether Cartwright would be able to return, the school suggested she apply for disability leave and was ensured of her job when she returned.

The school hired a replacement teacher and asked Cartwright to ask her doctor whether she could return for the 2007-2008 school year.

Cartwright received permission from her doctor to return the middle of the school year. The school noted concern about Cartwright's ability to supervise students and the students adjusting to a new teacher mid-year. The school suggested that she come back the following school year. Cartwright refused and came back to work as suggested in her doctor's note. She cited the school handbook, which read that failure to return the day after medical leave could result in being fired. The school said that Cartwright improperly informed them about her return and told her to return so they could plan for her arrival. The principal said that her disorderly conduct that day could jeopardize her later employment at the school, to which Cartwright threatened to sue.

The next month, the school board sent Cartwright a letter rescinding the school's offer for her to work the following year, citing her "insubordinate and disruptive behavior" in addition to her "threat to take legal action." At the next church meeting, the congregation voted 52-7 to fire Cartwright.

#### C.

Cartwright filed a charge of discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC) seeking to be reinstated to her former position as a commissioned minister. The Church claimed that Cartwright was unable to sue under the ministerial exception because teachers were instrumental in the religious mission of the school and Church. The Church also claimed that it bears specific procedures for internal conflict resolution and emphasizes resolving disputes within the Church. Cartwright failed to use the Church's procedures for conflict resolution, even though commissioned ministers are required to do so. Cartwright argued that the ministerial exception should not be instated in her case as a majority of her efforts are towards teaching the secular curriculum at school. She claimed that the firing had no doctrinal motivation, but rather a response to her retaliation to the establishment.

The Fourth Circuit reversed, holding that Cartwright was not subject to the ministerial exception. The Court set a standard of considering "primary duties" when interpreting the ministerial exception. An employee is a minister if "the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship."

#### **Applicable Case Law**

There constitutional concerns at hand focus on the "free exercise" and "establishment" clauses of the First Amendment. The ministerial exception was instated to protect the ability of churches to shape their religious doctrine and therefore, have full control over their expression of religion and "freely exercise" their faith. On the other hand, establishment clause comes into play when we consider whether it is the role of a secular court to decide, on behalf of the government,

whether or not a Church has to retain an employee. The ministerial exception rests at the crux of the relation between church and state.

#### A. The First Amendment

The First Amendment reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The text of the amendment includes the establishment clause, "Congress shall make no law respecting an establishment of religion," and the free exercise clause "Congress shall make no law.. prohibiting the free exercise thereof." We will examine both clauses to gain an understanding of the relationship between church and state.

##### a) The Establishment Clause

The establishment clause issue here asks whether it is possible for the courts, a branch of our secular government, can have a say in whether a church chooses to retain or not retain an employee. The following cases have set standards to govern the way the state can influence or not influence the church.

##### Everson v Board of Education (1947)

This case applied the establishment clause to the states through the due process clause of the Fourteenth Amendment. In Everson, the New Jersey law in question forced local school boards to pay for the transportation of students to and from all schools, including private schools. Almost all of the private schools affected by the law were parochial schools. A taxpayer filed a lawsuit against the state, arguing that his money was going indirectly towards a religious cause. The Supreme Court ruled that funding the transportation was permissible because the language affected schools of all religions equally. In the 5-4 majority opinion, Justice Black provided guidance about how the courts should construe the relationship between church and state.

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor

the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" 330 U.S. 1, 15-16.

This excerpt has frequently been cited in several cases dealing with religion. Important to our case is "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa." It is important to consider what ruling on this case may mean in terms of the courts telling a church who to keep in leadership and therefore, who can shape their religious doctrine.

Lemon v. Kurtzman (1971)

The Nonpublic Elementary and Secondary Education Act of Pennsylvania allowed the state to reimburse nonpublic schools (mainly from parochial schools) for the salaries of teachers who taught secular material. The Supreme Court struck down the law as unconstitutional under the establishment clause of the First Amendment and set a three-pronged standard for legislation in regards to religion:

The government's action must have a secular purpose;  
The government's action must not have the primary effect of either advancing nor inhibiting religion;  
The government's action must not result in excessive government entanglement with religion.

To some extent, the Lemon Test has become less applied over the years, but the ruling is still good law.

#### b) The Free Exercise Clause

The Free Exercise clause also plays an important role in the case as it pertains to how the Church wishes to control its religious doctrine. The Supreme Court has never ruled specifically on the ministerial exception, but several cases on the free exercise of religion exist. Note that the cases below deal largely with individuals claiming their rights under the free exercise clause. The Court has not yet extensively ruled on a collective church's rights under the clause.

Sherbert v. Verner (1963)

Adell Sherbert, a member of the Seventh-day Adventist Church, worked as a textile-mill operator. Two years into her employment, her employer switched from a five-day workweek to a six-day workweek, which included Saturdays. According to her beliefs, God forbade working on Saturdays (the Sabbath). Sherbert refused to work that day and was fired.

Sherbert could not find any other work and applied for unemployment compensation. Her claim was denied, and the lower courts denied her appeals. The Supreme Court, however, decided that she should have, in fact, been given unemployment benefits, and that the state's refusal of unemployment benefits to her constituted a burden on her Free Exercise of religion.

The Supreme Court also held that the government must demonstrate a compelling government interest in these types of cases, meaning that it is the government's job to prove to the court that the legislation in question serves to substantially further a legitimate goal of the government and its people. This rule came to be known as the Sherbert Test, a test that required demonstration of such a compelling interest in Free Exercise cases.

Wisconsin v. Yoder (1972)

Three Amish students from three different families stopped attending New Glarus High School in the New Glarus, Wisconsin, school district at the end of the 8th grade because of their religious beliefs. In so doing, they violated a Wisconsin law requiring all children to attend at least two years of high school. The three students were convicted in the Green County Court, and that ruling was upheld in the appeals court. Each defendant was fined the sum of \$5.

The Amish students and their parents argued that attendance in high school would prevent the free exercise of their religion, since high school curriculum often teaches some ideas at odds with Amish religious doctrines. They claimed that forcing the Amish students to attend high school would essentially annihilate Amish doctrines and preclude the free exercise of the Amish faith.

In a unanimous decision, the Court held that the individual's interests in the free exercise of religion under the First Amendment outweighed the State's interests in compelling school attendance beyond the 8th grade. In other words, since it was proved that forcing the Amish to go to high school would prevent the free exercise of their religion, the state had to show a compelling interest to compel them go to school. The Courts held that there was not a compelling enough interest to make the Amish attend two more years of high school.

Employment Division v. Smith (1990)

Before this case, the Sherbert Test was seemingly perfect. In deciding free exercise cases, the Supreme Court would often just balance the state's interest with the claims of the individual. In this case, the Supreme Court introduced a new way to examine whether a law that prohibits the free exercise of religion is unconstitutional.

In the majority opinion, Justice Scalia introduced the following wording, which would become important in future cases: "neutral law of general applicability. Scalia claimed that if a law was apparently neutral with respect to religion – if it did not obviously try to prevent the free exercise of religion – and if it applied generally, or equally, to every person in the country, then the law would probably never be an obstruction to the free exercise of one's religion. "It would doubtless be unconstitutional, Scalia wrote, to prohibit bowing down before a golden calf." A law that targets a religion that bows down before golden calves would probably be unconstitutional.

In this case, a small group of Native Americans were punished by the state for ingesting illegal drugs (Peyote). The Native Americans appealed to the Supreme Court, arguing that the drugs were part of their religion. The Supreme Court stressed that the Oregon statute banning drugs was, a neutral law of general applicability. The law did not say, Native Americans may not ingest peyote during religious ceremonies; instead, the law said, "No one shall ingest or possess any hallucinogenic drugs in the state of Oregon." Because the law did not target religion, it was probably constitutional, meaning that it is presumed to be constitutional until proven otherwise.

This case did not eliminate the Sherbert Test, nor did it create a new test (there is no such thing as the neutral law of general applicability' rule). Instead, it introduced a new idea. It stressed that in cases where a law is generally applicable, seemingly equitable, and does not specifically target religion, there is probably no First Amendment claim.

Finally, the most important consequence of this idea is that there is probably no unconstitutionality when laws are neutral. That is, when a law lacks neutrality, it likely does violate the First Amendment right to free exercise of religion.

It is for that reason that Justice Scalia says it is doubtless that prohibiting bowing down before a golden calf would be unconstitutional. It is not inherently neutral. Neutral laws, laws that do not specifically and directly say anything about a particular religion or religions, are not necessarily constitutional. Laws that are not neutral laws that directly discuss religion and religious practices are not necessarily unconstitutional. And finally, when the court encounters a law that is not neutral with respect to religion, it must presume that the law is unconstitutional until the government proves otherwise.

#### c) The Ministerial Exception

The Supreme Court has only once heard a case indirectly on the ministerial exception (in *National Labor Relations Board v. Catholic Bishop of Chicago*). The other cases discussed below come from the circuit courts of appeals.

National Labor Relations Board v. Catholic Bishop of Chicago (1979)

This case questions whether the National Labor Relations Board has the jurisdiction to approve of unions as bargaining agents for lay teachers in religiously affiliated schools would violate the free exercise of such schools. The Court ruled that schools that are run by a church and instruct in both secular and religious subjects are beyond the jurisdiction of the National Labor Relation Board.

In a 5-4 opinion, the Justices outweighed the free exercise of the school against the abilities of the National Labor Relations Board. While this does not relate directly to the ministerial exception, it demonstrates the Court broadly interpreting the free exercise powers of the collective church. Writing for the majority, Justice Burger wrote, "There would be a significant rush of infringement of the Religion Clauses of the First Amendment if the Act conferred jurisdiction over church-operated schools."

A three-prong test was established to analyze the religious and employment-related concerns. The application of the employment act should "give rise to serious constitutional questions. Next, the employment acts that apply to the case at hand should not be "construed to violate the constitution if any other possible construction remains available." Lastly, the statutes must be seen to apply to the present facts of the case.

Scharon v. St. Luke's Episcopal Presbyterian Hospitals (1991)

Reverend Anne Scharon was a chaplain at St. Luke's Episcopal Presbyterian Hospitals. She worked under Reverend J. Edwin Heathcock in the Department of Pastoral Care. The main task of a Chaplain was to "provide a religious ministry of pastoral care, pastoral counseling... and liturgical services for persons in the hospital." Scharon performed over 350 religious solemn rites during a 9-month span at the hospital. She was fired because Heathcock accused her of breaking several canonical laws. Scharon found that she was discriminatorily terminated due to her age and sex, which was in violation of the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. Sec. 630 et seq. (1988), and Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. Sec. 2000e et seq. (1988). Using the three-prong test in National Labor Relations Board v. Chicago and the Lemon test from *Lemon v. Kurtzman*, the United States Court of Appeals for Eighth Circuit decided that Scharon was a religious employee and could be fired. While the hospital itself served a secular purpose, it also offered religious services through employees like Scharon. Thus, the ministerial exception was upheld.

## DISCUSSION

The case at hand centers on the ministerial exception and the relationship between not only employer and employee, but also church and state.

#### I. ADA's Application to Religious Organizations

The ADA prohibits an employer from discriminating against a qualified individual with a disability on the basis of that disability in regard to all conditions of employment. The "ministerial exception" allows religious organizations to give preference in employment to individuals of that religion and "require all applicants to conform to the religious tenants of such organization."

However, the legislative history makes clear that Congress intended the ADA to broadly protect employees of religious entities from retaliation on the job, subject only to a narrowly drawn religious exemption. The House Report provides the following illustrative hypothetical example:

Assume that a Mormon organization wishes to hire only Mormons to perform certain jobs. If a person with a disability applies for the job, but is not a Mormon, the organization can refuse to hire him or her. However, if two Mormons apply for a job, one with a disability and one without a disability, the organization cannot discriminate against the applicant with the disability because of that person's disability.

A religious [entity] may give a preference in employment to individuals of the particular religion, and may require that applicants and employees conform to the religious tenants of the organization. However, a religious organization may not discriminate against an individual who satisfies the permitted religious criteria because that individual is disabled. The religious entity, in other words, is required to consider qualified individuals with disabilities who satisfy the permitted religious criteria on an equal basis with qualified individuals without disabilities who similarly satisfy the religious criteria.

#### A. Interference with the Church Governance

As the Fifth Circuit noted in *McClure v. Salvation Army*, "the relationship between an organized church and its ministers is its lifeblood." For the ministerial exception to bar an employment discrimination claim, the employer must be a religious institution and the employee must be a ministerial employee. The "religious organization" need not be a formal church, synagogue, or temple, but rather an entity organized by a religious group. Schools, hospitals, and other organizations qualify.

To determine whether an employee is ministerial under the second prong, this Circuit has instructed courts to look at the function, or

"primary duties" of the employee. As a general rule, an employee is considered a minister if "the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship." In extending the ministerial exception beyond ordained ministers, this Circuit has instructed courts to look at the function of the plaintiff's employment position rather than the fact of ordination.

The question of whether a teacher at a sectarian school classifies as a ministerial employee is one of first impression for this Court. However, the overwhelming majority of courts that have considered the issue have held that parochial school teachers such as Cartwright, who teach primarily secular subjects, do not classify as ministerial employees for purposes of the exception. See, e.g., *Redhead v. Conference of Seventh Day Adventists*, 440 F. Supp. 2d 211, 221-222 (E.D.N.Y. 2006) (holding that a teacher at a Seventh Day Adventist elementary school does not classify as a ministerial employee because her teaching duties were primarily secular and her daily religious duties "were limited to only one hour of Bible instruction per day"); *Guinan v. Roman Catholic Archdiocese of Indianapolis*, 42 F. Supp. 2d 849, 854 (S. D. Ind. 1998) (holding that a fifth grade teacher who taught at least one class in religion per term and organized Mass once a month at a religious elementary school was not a ministerial employee); *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 172 (2d Cir. 1993) (holding that applying the ADEA to a math teacher at a religious high school would not result in excessive entanglement under the Establishment Clause); *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389, 1392, 1397 (4th Cir. 1990) (holding that teachers at a religious school who integrated biblical material into traditional academic subjects should be considered lay teachers for purposes of the ministerial exception); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1370 (9th Cir. 1986) (holding that teachers at a church owned and operated school do not fulfill the function of a ministerial employee). But see *Clapper v. Chesapeake Conference of Seventh Day Adventists*, No. 97 CV 2648, 1998 WL 904528, at \*1, 7 (Dec. 29, 1998) (holding that a former elementary school teacher at a school whose primary purpose was the salvation of each student's soul through indoctrination into Seventh Day Adventist theological beliefs classified as a ministerial employee). By contrast, when courts have found that teachers classify as ministerial employees for purposes of the exception, those teachers have generally taught primarily religious subjects or had a central role in the spiritual or pastoral mission of the church. See, e.g., *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 463-65 (D.C. Cir. 1996) (holding that a nun whose primary duties were to teach canonical law at Catholic University and who was "entrusted with instructing students in the 'fundamental body of ecclesiastical laws' that governs the Church's sacramental life, defines the rights and duties of its faithful and the responsibilities of their pastors, and guides its administration" was a ministerial employee); *Sw. Baptist*, 651 F.2d at 283-84 (holding that seminary fac-

ulty were ministerial employees given that they served as "intermediaries between the [Baptist] Convention and the future ministers of many local Baptist churches," "instructed the seminarians in the 'whole of religious doctrine,' and [taught] only religious oriented courses").

The district court's factual determinations concerning Cartwright's primary duties throughout her work day were not clearly erroneous. The record supports the finding that Cartwright's employment duties were identical when she was a contract teacher and a called teacher and that she taught math, language arts, social studies, science, gym, art, and music using secular textbooks. Furthermore, the record indicates that Cartwright taught a religion class four days per week for thirty minutes and that she attended a chapel service with her class once a week for thirty minutes. Cartwright also led each class in prayer three times a day for a total of approximately five or six minutes. The record also indicates that Cartwright seldom introduced religion during secular discussions. Approximately twice a year, Cartwright led the chapel service in rotation with other teachers. However, teachers leading chapel or teaching religion were not required to be called or even Lutheran, and, in fact, at least one teacher was not. In all, the record supports the district court's finding that activities devoted to religion consumed approximately forty-five minutes of the seven hour school day.

The title of commissioned minister does not transform the primary duties of these called teachers from secular in nature to religious in nature. See *Sw. Baptist*, 651 F.2d at 285 (holding that certain employees, "though considered ministers by the Seminary, are not ministers" under the ministerial exception). The governing primary duties analysis requires a court to objectively examine an employee's actual job function, not her title, in determining whether she is properly classified as a minister. In this case, it is clear from the record that Cartwright's primary duties were secular, not only because she spent the overwhelming majority of her day teaching secular subjects using secular textbooks, but also because nothing in the record indicates that the Lutheran church relied on Cartwright as the primary means to indoctrinate its faithful into its theology.

By contrast, in *Clapper*, the defendant schools envisioned their teachers as having a primarily religious role. The teachers were required to be "tithe paying members of the Seventh-day Adventist Church and are expected to participate in church activities, programs, and finances." The Fourth Circuit observed that "[t]he purpose of this requirement is obvious—the Chesapeake Conference desires to insure that the minds of its youth are shaped by model members of the Seventh-day Adventist faith." Furthermore, the district court in the instant case found that the primary duties of called teachers are identical to those of contract teachers, who do not have the title of minister, and at least one contract teacher who taught at the school was not Lutheran. Given the undisputed evidence that all teachers at First Pres-

byterian were assigned the same duties, a finding that Cartwright is a "ministerial" employee would compel the conclusion that all teachers at the school-called, contract, Lutheran, and non-Lutheran-are similarly excluded from coverage under the ADA and other federal fair employment laws. However, the intent of the ministerial exception is to allow religious organizations to prefer members of their own religion and adhere to their own religious interpretations. Thus, applying the exception to non-members of the religion and those whose primary function is not religious in nature would be both illogical and contrary to the intention behind the exception.

In the instant case, First Presbyterian has attempted to reframe the underlying dispute from the question of whether First Presbyterian fired Cartwright in violation of the ADA to the question of whether Cartwright violated church doctrine by not engaging in internal dispute resolution. However, contrary to First Presbyterian's assertions, Cartwright's claim would not require the court to analyze any church doctrine; rather a trial would focus on issues such as whether Cartwright was disabled within the meaning of the ADA, whether Cartwright opposed a practice that was unlawful under the ADA, and whether First Presbyterian violated the ADA in its treatment of Cartwright.

Thus, we hold that Cartwright was unlawfully terminated. The ministerial exception fails to hold.

BENJAMIN SCUDERI, Associate Justice, DEB, SIMMONS, Associate Justices joining, dissenting:

This case is clear, so I will be brief. The majority errs from the most crucial part of its analysis- the very foundation of what it means to be a religious minister. Chief Justice Zhao writes, "An employee is considered a minister if 'the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.'" Primary duties analysis by the majority is severely limited. We should consider the role of Cartwright in teaching religious classes, leading services, and most importantly, being a member of the church leadership so much so that she was elected and terminated by the congregation. In our view, nothing is made clearer than her influence on the religious doctrine of the church. The church should have the ability to shape its religious expression and shape its faith.

Furthermore, Cartwright sidestepped the Church's internal procedures for conflict resolution. This in itself shows that she disrespected their bylaws. She was not fired for her disruptive behavior as much as her flagrant disregard for the rules of the church.

Furthermore, we have a larger issue of the government interfering with the operations of a church. By forcing the church to retain an em-

ployee we are breaking that powerful barrier erected by our founding fathers between church and state. What the majority proposes would clearly be considered "excessive entanglement" in religious affairs. The majority is simply shortsighted to not acknowledge this larger problem.

For these reasons, we respectfully dissent.