

Schools case cuts both ways for ACLU

By Tom Price

Washington Bureau

WASHINGTON — American Civil Liberties Union officials are torn between the rights of religious freedom and sexual equality in the Dayton Christian Schools case scheduled for a U.S. Supreme Court hearing early next year.

"We will no doubt put in an appearance — somewhere, on somebody's side, or in the middle," Benson Wolman, the Ohio chapter's executive director, said recently. "The case obviously joins important constitutional principles in conflict with each other — equal protection of the law and freedom of religion."

The organization's national general counsels have decided that they probably should file a friend-of-the-court brief in opposition to a U.S. 6th Circuit Appeals Court ruling that the Ohio Civil Rights Commission cannot investigate a sex discrimination allegation against the school system.

The national officials also believe that the schools should not be allowed to enforce a "biblical chain of command" that forbids school employees from seeking outside help in disputes with school administrators.

But the national ACLU officials have not taken a position on whether the schools should be allowed to refuse to employ mothers of young children, which is at the heart of the case.

The Ohio chapter's board of directors was unable during its September meeting to agree on what an ACLU brief should say. The question will be addressed again at a Dec. 7 meeting.

"It's a difficult decision because what you're doing is balancing civil liberties concerns," said Lawrence Herman, an Ohio State University law professor who is one of the ACLU's three national general counsels.

Joan Bertin, a lawyer in the ACLU's women's rights office, said that the national organization "has a very strong commitment to women's rights as well as to the First Amendment."

The case stems from the schools' March 26, 1979, dismissal of teacher Linda Hoskinson, who was expecting her first child that summer.

School officials first notified Mrs. Hoskinson that her contract would not be renewed because of their religious belief that mothers of young children should not work outside the home. When she contacted a lawyer about that school action,

she was fired for breaking the "biblical chain of command" by taking the dispute outside the church.

The federal appeals court blocked an Ohio Civil Rights Commission investigation of the incident, citing the First Amendment's protection of religious freedom. The U.S. Supreme Court then agreed to consider whether that freedom outweighs the state's right to enforce anti-discrimination laws.

"The potential here is just fascinating — there are so many sides and issues that can be raised," Wolman said.

ACLU members strongly believe that religious institutions should be free of government controls, Wolman, Herman and Bertin said.

But by prohibiting even an investigation into a discrimination complaint against a religious institution, the appeals court may have created a shield for discrimination that is not grounded in religious doctrine, they said. And national ACLU officials believe that the "biblical chain of command" also could provide a cover for illegal conduct.

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Bertin said national ACLU officials believe that "in order to enable the state to act in cases where it is appropriate to act, you have to give them jurisdiction to investigate."

Similarly, she said, Dayton Christian Schools' "biblical chain of command" can "operate as sort of a *Catch 22* to shield religious institutions from secular authority even where secular authority is properly invoked."

Wolman noted, however, that the state's position, "carried to its extreme, could allow the state to say that a religious institution could not discriminate in any hiring whatsoever, so the Catholic Church could be required to employ women as priests."

Herman noted that the Supreme Court has allowed the government to override religious doctrine in some instances, such as in forbidding Mormons to practice polygamy. And religious institutions are not automatically exempted from laws governing health and safety issues.

The O' ACLU chapter is likely to

agree that the state should be allowed to investigate, Wolman said. But he and Herman said the chapter's board members hold many conflicting opinions about the issues raised in the case.

"There are those on the board who think that, even if this is a matter of religious doctrine, the interest in equality is too great and the state ought to have a right to enforce its civil rights laws," Herman said. "Others think that, if this really is a matter of church doctrine, then that is paramount to any interest the state has in prohibiting discrimination."

Wolman said the Ohio board has not yet discussed the schools' "biblical chain of command." And he said board members are far from agreement about the sex-discrimination aspect of the case.

The state and national organizations could end up taking different positions and filing conflicting briefs in the case, Wolman said.

"We keep going: 'On the one hand this, on the other hand that,'" he said. "We still are grappling with it."

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