

High Court passes on Kamehameha decision

On November 8 the Supreme Court denied review of a Ninth Circuit Court of Appeals decision which held that a Protestant school cannot refuse to hire a non-Protestant who inquired about a teaching position at the school.

By ruling in *Kamehameha v. EEOC*, that an organization can claim a religious exemption under Section 702 of Title VII of the Civil Rights Act only if a court determines that the institution is "primarily religious" rather than "primarily secular," the appeals court effectively nullified an exemption from the statute's ban on religious discrimination in employment. The ninth circuit's decision runs counter to that of two other circuit courts of appeal which have examined the issue.

In a friend of the court brief filed on behalf of Kamehameha school, the Catholic League argued that if the decision of the ninth circuit were allowed to stand, the result would be a "severe erosion of the autonomy of religious bodies in determining their own policies, articulating their own voices, and pursuing their own paths free from needless governmental intervention in their affairs."

Since the exemption codified in Section 702 was intended by Congress to protect religious educational institutions, it is unfortunate that the Court declined to review this case. As the League's brief points out, the right to hire faculty members who share common religious beliefs and convictions is essential if religious schools are to carry out their educational mission. Furthermore, the ninth circuit's decision will result in an excessive entanglement of government in religious matters as courts undertake the task of determining whether educational institutions are "primarily religious" or

“primarily secular”.