

# Non-sectarian Protestant school backed in teacher hiring discrimination suit

## League joins brief

The Catholic League has joined the Christian Legal Society and others in filing a friend of the court brief asking the United States Supreme Court to review a decision of the Ninth Circuit Court of Appeals which ruled that a Protestant school cannot refuse to hire a non-Protestant who inquired about a teaching position.

In narrowly construing Section 702 of Title VII of the Civil Rights Act of 1964, the court effectively nullified an exemption from the statute's ban on religious discrimination in employment. The exemption was intended by Congress to protect religious educational institutions.

The background facts of the case are clear and straightforward. Kamehameha is a religiously oriented school in Hawaii which is operated under the terms of a non-profit charitable trust; the trust requires that the trustees and teachers of the school be Protestant.

When a non-Protestant who wished to teach at the school was informed of the schools' Protestant-only requirement for teachers, she filed a discrimination charge against Kamehameha with the Equal Employment Opportunity Commission. The EEOC rejected the schools' defense that it was a religious educational institution under Section 702 and, therefore, permitted to discriminate on the basis of religion in its hiring of teachers. The EEOC filed suit in federal district court alleging Kamehameha's conduct in failing to hire a non-Protestant violated Title VII's ban on religious discrimination in employment.

The court disagreed, ruling that Kamehameha was entitled to a religious educational exemption under Section 702. The Ninth Circuit Court of Appeals reversed the decision of the district court and held that Section 702 must be narrowly construed, available “only [to] those institutions with extremely close ties to organized religion.”

Under this ruling, which runs counter to decisions of two other circuit courts which have examined the issue, an organization can claim a religious exemption under Section 702 only if the court determines that the institution is “primarily religious,” but not if the court determines it is “primarily secular.”

In urging the Supreme Court to review this decision, the League argues that if the decision of the Ninth Circuit is allowed to stand, the result will 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.”

As the 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. Not only would the decision of the court of appeals significantly burden this right, it would result in an excessive entanglement of government in religious matters.