



U.S. Supreme Court Upholds Right of Religious Institutions to Choose “Who will Preach their Beliefs, Teach their Faith, and Carry Out their Mission”*

Hosanna-Tabor v. EEOC, 565 U.S. ____ (Jan. 11, 2012)

This week the U.S. Supreme Court recognized the “ministerial exception,” rooted in the First Amendment, which forbids governmental interference with a religious institution’s selection of its ministers. Chief Justice Roberts, writing for a unanimous Court, explained that “[r]equiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, . . . interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.”¹ The Court therefore held that a schoolteacher, who also held responsibilities as a minister for her church, could not use the Americans with Disabilities Act to challenge her dismissal following her diagnosis with narcolepsy.

Although this case does not set a bright line for determining when a person qualifies as a “minister” for purposes of the First Amendment, it is clear that the ministerial exception extends beyond the head of a congregation. Based on this ruling, courts will look to factors such as whether the person is ordained or otherwise held out as a minister, and the person’s role in “conveying the Church’s message and carrying out its mission.”² If a person so qualifies, he or she cannot maintain an employment discrimination suit against his or her religious institution.

Facts

Cheryl Perich was a teacher with the Hosanna-Tabor Evangelical Lutheran Church and School in Michigan until prior to the 2004–2005 school year, when she developed narcolepsy, a serious sleep disorder. As a “called” teacher, Ms. Perich had received formal re-

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1. *Hosanna-Tabor Lutheran Evangelical Church and School v. EEOC*, 565 U.S. ____ (2012) (slip op. at 13).

2. *Id.* (slip op. at 17).

ligious education and the endorsement of her local Synod district. She taught various academic subjects to kindergarteners and fourth graders, but also held the official title of “Minister of Religion, Commissioned.” She taught a religion class four days per week, led her students in prayer and devotional exercises every day, and led the weekly school-wide chapel service about twice per year.³

Having missed the first part of the school year on disability leave, Ms. Perich expressed her intent to return to the school in February 2005, but the congregation voted to offer her payment of a portion of her health insurance premiums in exchange for her resignation. Ms. Perich refused to resign, and showed up for work on February 22, whereupon she was asked to leave. Perich threatened to take legal action.⁴

The congregation, citing Ms. Perich’s “insubordination and disruptive behavior” on February 22, as well as the damage she had done to her “working relationship” with the school by “threatening to take legal action,” voted to rescind Ms. Perich’s call on April 10.⁵

Procedural History

Ms. Perich filed a complaint with the Equal Employment Opportunity Commission, asserting that her employment had been terminated in violation of the Americans with Disabilities Act. The EEOC brought suit in federal court against Hosanna-Tabor based on the allegation that Ms. Perich had been fired in retaliation for threatening to file an ADA lawsuit.⁶

Hosanna-Tabor moved for summary judgment on the EEOC’s and Ms. Perich’s claims, citing to the ministerial exception. The district court agreed with Hosanna-Tabor that Ms. Perich qualified as a minister, and therefore that the First Amendment prohibited governmental interference with her employment relationship.⁷

On appeal, the Court of Appeals for the Sixth Circuit held that Ms. Perich *did not* qualify as a minister under the ministerial exception, in particular because her duties as a “called” teacher were no different than those of a lay teacher. Thus, the Court of Appeals ordered the district court to reinstate the retaliation claims.⁸

Supreme Court Ruling

The U.S. Supreme Court reversed the appeals court’s ruling—Ms. Perich qualifies as a minister, and therefore she cannot maintain an employment discrimination suit against Hosanna-Tabor. The Court’s ruling is tailored to the facts of Ms. Perich’s particular case. Yet the Court’s embrace of the ministerial exception as dictated by the First Amendment, and this case’s guidance as to the doctrine’s application, will help perpetuate the autonomy of religious institutions in choosing their religious messengers and spiritual leaders.

3. *Id.* (slip op. at 2–3).

4. *Id.* (slip op. at 3).

5. *Id.* (slip op. at 4).

6. *Id.*

7. *Id.* (slip op. at 5).

8. *Id.* (slip op. at 5–6).

The Ministerial Exception

As recognized and defined by the Supreme Court, the ministerial exception precludes the application of employment discrimination laws to “claims concerning the employment relationship between a religious institution and its ministers.”⁹ Such claims are barred whether they seek reinstatement as a minister or money damages; under the First Amendment, a court may neither require a church to accept a minister it does not want, nor impose a penalty for terminating an unwanted minister.¹⁰

Although *Hosanna-Tabor* is the first Supreme Court case explicitly recognizing the ministerial exception, it is in line with many decisions from state and federal courts of appeals. For example, Jim Serritella has helped strengthen legal protection of church autonomy with his successful representation in several landmark cases, including *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976), *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and *Grace Lutheran Church v. Lutheran Church-Missouri Synod*, 454 N.E.2d 1038 (Ill. App. 3d 1983). In 2009, Burke Warren attorneys Jim Geoly and Susan Horner won a religious freedom case in the Illinois Appellate Court, which held that a priest’s defamation and intentional infliction of emotional distress claims in the disciplinary context were barred by the First Amendment.¹¹

Chief Justice Roberts traced the history of religious liberty in America back to Magna Carta and the Puritans who later fled England for the New World, and found the ministerial exception supported by both Religion Clauses of the First Amendment. “By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.”¹²

Despite this sturdy First Amendment protection, the Supreme Court ruled that the ministerial exception does not operate as a jurisdictional bar that would entitle a religious entity to immediate dismissal of a discrimination lawsuit. Instead, the ministerial exception is an affirmative defense—courts will hear evidence as to whether a complainant qualifies as a minister to determine whether dismissal is warranted.¹³ In the Seventh Circuit, which includes Illinois, Indiana, and Wisconsin, this distinction reduces the protection afforded by the doctrine.¹⁴

Hosanna-Tabor argued that Ms. Perich’s threat to sue was incompatible with the Synod’s approach to dispute resolution, but under the ministerial exception, the motive for the termination is immaterial. “The purpose of the exception is not to safeguard a church’s decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter ‘strictly ecclesiastical’—is the church’s alone.”¹⁵ The crux of the analysis, then, is whether the complainant is a “minister.”

9. *Id.* (slip op. at 4).

10. *Id.* (slip op. at 19–20).

11. *See Stepek v. Doe*, 910 N.E.2d 655 (Ill. App. 3d 2009).

12. *See Hosanna-Tabor*, 565 U.S. at ____ (slip op. at 13 & n.2).

13. *Id.* (slip op. at 6–7).

14. *See Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036 (7th Cir. 2006) (holding that “[f]ederal courts...do not exercise jurisdiction over the internal affairs of religious organizations”).

15. *See Hosanna-Tabor*, 565 U.S. at ____ (slip op. at 20) (citation omitted).

Who Qualifies as a Minister?

The Supreme Court took pains to limit its holding to the facts of Ms. Perich's claims, but its analysis sheds light on how the ministerial exception will be applied in other cases. For the Court, it was relevant but not determinative that Ms. Perich spent only 45 minutes of each workday on her religious duties.¹⁶ The Court declined to adopt a "rigid formula," and instead considered "all the circumstances of her employment."¹⁷

The Court's conclusion that Ms. Perich qualified as minister is based on "the formal title given [to her], the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church."¹⁸ "[T]he fact that an employee has been ordained or commissioned as a minister is surely relevant," as are an employee's religious training and religious mission.¹⁹ Yet the Court explicitly declined to clarify whether someone with the same duties would qualify as a minister in the absence of Ms. Perich's other qualifications, such as her training and title.²⁰

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Justice Alito, joined by Justice Kagan, offered some further guidance in his concurring opinion, in which he recognized that the term "minister" is rarely used to refer to members of the clergy outside of Protestant faiths. Thus, he explained, "courts should focus on the function performed by persons who work for religious bodies [The ministerial exception] should apply to any 'employee' who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith."²¹

This ruling leaves many unresolved questions concerning the scope of the ministerial exception. What is especially encouraging for religious institutions, however, is that every member of the Supreme Court readily accepted the existence of the ministerial exception, as well as its application to Ms. Perich, whose predominant role was as a schoolteacher.

16. *Id.* (slip op. at 19) ("The heads of congregations themselves often have a mix of duties, including secular ones The issue before us . . . is not one that can be resolved by a stopwatch.").

17. *Id.* (slip op. at 15–16).

18. *Id.* (slip op. at 18).

19. *Id.*

20. *Id.*

21. *Hosanna-Tabor v. EEOC*, 565 U.S. at ____ (Alito, J., concurring) (slip op. at 2).

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