



## Legal Alert: Supreme Court Addresses "Ministerial Exception" to Discrimination Laws

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**Executive Summary:** On January 11, 2012, the Supreme Court issued what is arguably one of its most significant religious liberty decisions in two decades. The Supreme Court unanimously held that a teacher at a Lutheran School could not maintain an action under the Americans with Disabilities Act (ADA) arising out of her discharge. Chief Justice John Roberts, writing for the court, in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al.*, 565 U.S. \_\_\_, No. 10-553 (2012), stated that the "ministerial" exception to the application of such employment discrimination laws was grounded in the Establishment and Free Exercise Clauses of the First Amendment and should be applied to this teacher because she was a minister within the meaning of the "ministerial" exception.

This was the first time the Supreme Court acknowledged the existence of the "ministerial exception," a concept uniformly recognized by the federal appeals courts. The ministerial exception is grounded in the First Amendment and precludes application of such legislation as Title VII and other employment discrimination laws to claims concerning the relationship between a religious institution and its ministers. According to the Supreme Court, "such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."

### The Supreme Court Opinion

The case was brought by Cheryl Perich, who had been a teacher at Hosanna-Tabor Evangelical Lutheran Church and School ("Hosanna-Tabor"). The teachers at Hosanna-Tabor were classified into two categories: "called" and "lay." Called teachers had to satisfy certain academic requirements, which included taking courses in theological study; obtaining the endorsement of their local religious leaders; and passing an oral examination by a faculty committee. Once called, a teacher receives the formal title "Minister of Religion, Commissioned." At Hosanna-Tabor, a call could only be rescinded for cause and by a supermajority vote of the congregation. By contrast, lay teachers were not required to satisfy certain religious requirements, or even to be Lutheran. At Hosanna-Tabor, although the teachers generally performed the same duties regardless of whether they were lay or called, lay teachers were hired only when called teachers were unavailable.

Ms. Perich started off as a lay teacher, but was then hired as a called teacher after completing the requirements. Although Ms. Perich taught predominantly secular subjects, she also taught a religion class four days a week; led the students in prayer and devotional exercises each day; and attended a weekly school-wide chapel service.

Ms. Perich's conflict with Hosanna-Tabor began when she attempted to return to work following months of medical leave due to narcolepsy. The school, however, decided that her health would not permit her return, and a replacement was hired to teach her classes. School officials then decided it would be best if she resigned. Ultimately, Ms. Perich and school leaders came into sharp conflict when she threatened to sue, claiming that the refusal to retain her was based on her illness in violation of the ADA. When she tried to return to school, she was fired. The school told Ms. Perich that she was let go because of her threat to sue, which violated a Lutheran religious tenet that members of the faith should resolve internally their disagreements.

Consequently, Ms. Perich filed a charge of discrimination and retaliation with the EEOC alleging that Hosanna-Tabor had discriminated and retaliated against her in violation of her rights under the ADA. A federal trial court ruled that her claim was barred by the "ministerial exception" to federal workplace discrimination laws. The Sixth Circuit, however, while recognizing (as have all federal appeals courts) that there was such an exception, ruled that Ms. Perich could not be treated as a "minister" under that exception because her duties were not primarily involved in the teaching of the faith, and that she had no role in spreading the faith or in church government.

The Supreme Court reversed the Sixth Circuit's decision, holding that, for purposes of the exception, Ms. Perich qualified as a "minister." The Supreme Court noted, among other things, that the appellate court placed too much emphasis on Ms. Perich's performance of secular duties and placed too little emphasis on the fact that Ms. Perich was a commissioned minister and had undergone substantial religious training.

In finding that the exception applied in this case, the Court refused to establish a bright-line test for deciding who qualifies as a minister. Rather the Court held that Ms. Perich's role as a commissioned minister and the nature of the functions she performed for the school were sufficient to make her a "minister" for purposes of the ministerial exception.

In concurring opinions, Justices Thomas and Alito offered two different takes on how to define a "minister." Justice Thomas stated that courts applying the ministerial exception should "defer to a religious organization's good-faith understanding of who qualifies as a minister." Justice Alito, with whom Justice Kagan joined, proposed a more functional approach, whereby the 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."

#### **Employers' Bottom Line:**

While it is clear that the Court's decision is a victory for religious employers, it is important to note that this decision only bars discrimination suits by ministers against religious employers, not lawsuits filed by lay employees against religious employers. It remains to be seen how the lower courts will

use this decision in determining who qualifies as a "minister" for purposes of the exception. In addition, the Court noted that it expressed no opinion on whether this exception would bar "other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employer." Accordingly, it is important for religious employers to strive to maintain a workplace free from discrimination, other than on the basis of religion<sup>[1]</sup>. Religious employers may also see employment-related lawsuits brought under state laws rather than federal discrimination claims as in the past.

If you have any questions regarding this decision or other labor or employment related issues, please contact the author of this Alert, Adam Keating, [akeating@fordharrison.com](mailto:akeating@fordharrison.com), an attorney in our Atlanta office, or the Ford & Harrison attorney with whom you usually work.

[1] Both Title VII and the ADA contain exemptions that permit religious organizations to discriminate on the basis of religion.