SCOTUS Upholds Broad Standard For Permitting Religious Exemption From Employment Discrimination Claims

Insights
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By a 7-to-2 vote, the U.S. Supreme Court issued an important and expansive ruling for religious institutions today, holding that the "ministerial exception" primarily requires an inquiry into whether an employee carries out important religious functions for its religious employer. The ministerial exception allows a religious employer to use an employee's status as a "minister" to invoke the First Amendment's protections against government interference in the employer's selection of its employees. As a result of today's ruling in the consolidated cases of *Our Lady of Guadalupe School v. Morrisey-Berru* and *St. James School v. Biel*, courts are barred from adjudicating employment discrimination claims brought by an employee who performed certain religious tasks for her religious employer.

In light of this decision, religious employers should assess their employees' positions and ensure that job descriptions, handbooks, and contracts are clear regarding the important religious functions that employees perform, the behaviors that they model, and that their expected teachings and other responsibilities in carrying out the faith are clearly outlined and consistently evaluated and enforced. In addition, religious schools should also articulate an employee's obligation to understand and incorporate faith education into curriculum and daily routines (e.g., praying with students, attending religious services with students, etc.) as well as the school's mission to educate and form students in the faith. Attorneys should review all related cases they are litigating, as well as their future cases, to determine whether they can use this First Amendment protection in their favor.

9th Circuit Reversal Upends Long-Established Exception, Prompting SCOTUS Review

In 2012's *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, the Supreme Court unanimously recognized that the "ministerial exception" protected a religious school's First Amendment right to choose its own religious teachers by exempting these institutions from anti-discrimination laws when employees are deemed "ministers." Since 2012, most courts have ruled that ministerial employees in a school setting are those who perform important religious functions, including instructing young children in the precepts of a particular faith. However, when the 9th Circuit unexpectedly rejected this widely accepted argument with respect to classroom teachers in two similar cases arising out of Catholic schools, *Our Lady of Guadalupe School* and *St. James School*, the Supreme Court was once again invited to review this exception.

Agnes Morrisey-Berru, a former employee of Our Lady of Guadalupe School, and Kristen Biel, a former employee of St. James School, each taught fifth-grade students at their respective institutions. Both teachers taught a religion class, integrated Catholic values in other subjects they taught, educated their students ceremonial traditions (e.g., communion, confession, etc.), and joined their students in daily prayer, Mass, and other religious services at their schools. However, when the schools decided not to renew the teachers' contracts, each citing a history of poor performance, the teachers brought forward discrimination suits.

In both cases, when addressing the ministerial exception, the federal district courts reviewed the teachers' essential tasks at their schools and found there to be "important religious functions" in their roles and responsibilities. The district courts cited the Supreme Court's *Hosanna-Tabor* decision to side with the religious schools and conclude that the employers had the right to be selective with their teachers, without exposure to discrimination claims, because the teachers were deemed ministerial employees. The former employees each appealed their cases.

On appeal, the 9th Circuit rejected the argument that the duties test was the only standard for exercising the ministerial exception. Instead, the appeals court found that all four factors in *Hosanna-Tabor* needed to be considered — not just the factor relating to religious duties. The 9th Circuit concluded that, unlike the employee in *Hosanna-Tabor*, Morrisey-Berru was not a "minister" because she had limited religious credentials, training, or ministerial background, carried a secular title ("teacher"), and did not hold herself out to the public as a religious leader or minister. St. James School was met with a similar fate on appeal, where the appellate court also reversed the district court's ruling.

Although the 9th Circuit denied St. James School's petition for *en banc* review, nine judges joined in a contentious dissenting opinion, criticizing the appellate reversals in both cases as an alarming impact on religious freedom. Leading legal scholars and diverse religious groups have also publicly condemned the 9th Circuit's rulings as "dangerously wrong." To settle the split between the 9th Circuit and other federal courts of appeals that have ruled on the question, the Supreme Court agreed to review the decisions and weigh in on this important separation of church-and-state question.

Supreme Court: Religious-Responsibility Inquiry Is Indeed Focused On Duties

Today, the Supreme Court ruled that the consistent focus in the lower courts on the employee's responsibilities is an illustration of an agreed-upon primary consideration when determining whether the ministerial exception applies. The Court noted that, although it outlined four factors it found relevant in its *Hosanna-Tabor* decision in dismissing Perich's discrimination claims under the ministerial exception, that does "not mean that they must be met – even that that they are necessarily important – in all cases." In *Hosanna-Tabor*, those factors were:

- whether the employer held the employee out as a minister by bestowing a formal religious title;
- whether the employee's title reflected ministerial substance and training;

- whether the employee held herself out to the public as a minister; and
- whether the employee's job duties included "important religious functions."

Today, the Court's decision makes clear that a *variety of factors* may be important to the analysis of whether an employee "performed vital religious duties" when allowing an employer to use the First Amendment to shield it from employment discrimination claims.

For this reason, the Court found that the 9th Circuit incorrectly executed a more stringent and formulaic interpretation of *Hosanna-Tabor* when concluding neither Ms. Biel nor Ms. Morrisey-Berru fell within the ministerial exception. The Court stated that the four factors in *Hosanna-Tabor* were not to be treated as "checklist items to be assessed and weighed against each other in every case." It found that the 9th Circuit afforded too little weight to the teachers' duties and unfairly criticized the fact that the teachers taught religion from a required textbook. Instead, the Court took a broader view, emphasizing that courts should "take all relevant circumstances into account" and determine "whether each particular position implicated the fundamental purpose of the exception." The factors discussed in *Hosanna-Tabor* were never intended to impose any "rigid formula."

Regarding *Our Lady of Guadalupe*, and *St. James School*, the Supreme Court went back to the district courts' and the 9th Circuit's findings regarding the teachers' "significant religious responsibilities." For example, their employment agreements and faculty handbooks clearly specified that they were expected to help the schools carry out their missions of educating and forming students in the Catholic faith. They were the members of the school staff who were entrusted most directly with the responsibility of educating students in the faith. And not only were they obligated to provide instruction about the faith, they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith. They prayed with their students, attended Mass with them, and prepared the children for participation in other religious activities.

The Court was not concerned with the fact that the teachers' titles did not include the term "minister" or that they did not have as intensive formal religious training as the teacher in *Hosanna-Tabor* — their core responsibilities as teachers of religion were the same. As the Court explained, it was enough that the schools "expressly saw [the teachers] as playing a vital part in carrying out the mission of the church" acknowledging that "the schools' definition and explanation of their roles is important." When a religious school believes its teachers have a sufficient understanding of the faith to teach it to students, "judges have no warrant to second-guess that judgment or to impose their own credentialing requirements."

"In a country with the religious diversity of the United States," the Court concluded, "judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition. A religious institution's explanation of the role of such employees in the life of the religion in question is important."

Given today's ruling, upon challenge, courts must assess a variety of factors in determining whether a purported minister performs important religious functions for the religious institution in assessing whether the ministerial exception applies. "What matters, at bottom, is what an employee does," the Court said. Lower courts have now been instructed to allow religious institutions the benefit of exemption from employment discrimination claims on the basis of the First Amendment when an employee's functions are ministerial and the employee plays an important part in carrying out the mission of the church.

A Win For Employers: This Primary Standard Means A Broader Application

The Supreme Court's ruling also means that employers and their attorneys can now apply the Court's narrower focus on the duties consideration, essentially broadening the class of employees that fall under the ministerial exception for the purposes of both hiring and litigation. Under the Court's ruling, formalities such as title and education can be helpful, but are neither necessary nor dispositive. However, employers and counsel should recognize that today's ruling today was about the role of teachers in the educational workplace. You cannot assume that this same standard would apply in the same broad manner to bus drivers, janitors, and all other employees. You will want to work with your legal counsel to determine who this broad standard will be applied to in your specific setting.

Once you feel comfortable knowing which employees are covered by this standard, you should carefully review each purported ministerial employee's job description and consider two important questions:

- Do the employee's job duties and responsibilities include what would be considered "important religious functions"?
- What is the employee's role in the mission of carrying out the faith?

If your school finds that the employee performs religious functions and carries out important roles in the teaching and modeling of the faith, then you should assert your right to select its ministers and raise the ministerial exception as an affirmative defense in any legal challenge. If you fail to classify a purported ministerial employee without considering these critical factors, a court may find that you waived your right to escape liability from discrimination claims under the Establishment and Free Exercise clauses of the First Amendment.

If you have questions about how to best assess and document the important religious functions and responsibilities or to effectively defend against discrimination or retaliation claims, regardless of whether in an administrative or legal setting, please contact your Fisher Phillips attorney or any member of our Education Practice Group.

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