

# SUPREME COURT RULES: “CHURCH MUST BE FREE TO CHOOSE THOSE WHO WILL GUIDE IT ON ITS WAY”

Insights  
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On January 11, 2012, the U.S. Supreme Court issued a rare unanimous decision for religious employers. The decision both clarifies that the ministerial exception is an absolute bar to employment discrimination suits brought on behalf of a minister based on employment decisions made by the employer, and illustrates that the ministerial exception may apply to a range of employees of religious institutions.

The Court ducked the issue of whether the ministerial exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers, leaving that question open for another day. *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*.

## Background

Hosanna-Tabor Evangelical Lutheran Church and School is a Lutheran school in Redford, Michigan, that teaches kindergarten through eighth grade. The school employs two types of teachers: “called” and “lay.” Called teachers are individuals who have completed academic colloquy classes focusing on the tenets of the Christian faith. After completing the colloquy classes, called teachers receive the title of “commissioned ministers” and their names are placed on the Lutheran Church-Missouri Synod’s list of called teachers (to be accessed by any of the Synod’s schools).

Called teachers are recommended to the congregation by the School Board. If deemed acceptable, they are hired by the voting members of the congregation and may not be dismissed without cause, as determined by the congregation. Called teachers also may claim a housing allowance on their income taxes for conducting activities in the exercise of the ministry.

Lay teachers (also referred to as “contract” teachers), on the other hand, are hired by the school’s Board of Education under a contract for a one-year term. They are often hired by the school when the school cannot locate a called teacher who has the experience or expertise in a particular subject matter for the school. They are not required to be Lutheran.

Cheryl Perich joined the Hosanna-Tabor staff in July 1999 as a lay kindergarten teacher. She taught a range of secular subjects, including math, language arts, and music. She completed the required colloquy classes at Concordia College in February 2000. Hosanna-Tabor then hired Perich as a called teacher on March 29, 2000. Perich continued teaching kindergarten through the end of the 2002-2003 school year following which she taught third and fourth grades.

Perich became ill in June 2004 and was placed on a disability leave at the beginning of the 2004-2005 school year. In December 2004, Perich notified the school that she had been diagnosed with narcolepsy and would be able to return to work in two or three months after being stabilized on medicine. Not surprisingly, the school was both concerned about classroom continuity and Perich’s ability to teach and supervise after her return (and after a long absence from this class). These conflicting concerns led to a series of difficult communications between Perich and the school, resulting in the school asking Perich to resign her call and Perich threatening to sue for disability discrimination.

Ultimately, the school terminated Perich’s employment. Perich went to the EEOC, which brought suit on her behalf, alleging that the school had retaliated against Perich for asserting her rights under the Americans with Disabilities Act. Raising what is known as the “ministerial exception,” the school moved to dismiss Perich’s claims on the basis that the First Amendment barred her claims because they concerned the employment relationship between a religious institution and one of its members, and precluded the court from having jurisdiction over Perich’s claims.

The trial court agreed with the school, but on appeal the U.S. Circuit Court of Appeals for the 6<sup>th</sup> Circuit reversed after concluding that Perich did not qualify as a “minister” under the exception. The Supreme Court took the case because courts throughout the United States have rendered a series of confusing and conflicting opinions over the years on the scope of the ministerial exception.

The issue before the Supreme Court was whether the ministerial exception applies to bar a court from reviewing a retaliation claim asserted by an elementary teacher against her religious employer where the teacher is a commissioned minister who teaches both religious and secular classes and leads the students in prayer.

### **The Ruling Was Unanimous**

The Court held that the Establishment and Free Exercise Clauses of the First

Amendment bar suits brought on behalf of ministers against their religious employers, claiming termination in violation of employment discrimination laws. The Court upheld the principle that it is impermissible for the government to contradict a church's determination of who can act as its ministers.

It reasoned that requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so intrudes on the internal governance of the church, not just a mere employment decision. The Court articulated that the purpose of the ministerial exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. Instead, the exception ensures the authority to select and control who will minister to the faithful is the church's alone.

The Court further held that Perich, though not a minister in the conventional sense of the word, was indeed a minister of the church and thus fell within the ministerial exception. The Court failed to articulate a rigid formula for deciding when an employee qualifies as a minister. Instead, the Court applied a case-by-case approach and looked at the totality of the circumstances surrounding Perich's employment.

In determining that Perich was a minister, the Court considered that the School held her out as a minister, with a role distinct from most of its members, that Perich's title represented a significant degree of religious training followed by a formal process of commissioning, that Perich held herself out as a minister, and that her job duties reflected a role in conveying the Church's message.

### **The Significance To Religious Employers**

The Court's decision confirms that the ministerial exception bars ministers from bringing employment discrimination suits against their religious employers. However, it is important to note that the bar only applies to employment discrimination suits brought by ministers, not employment discrimination suits brought by other lay employees. Therefore, when taking into consideration whether the ministerial exception will apply to a given employment decision, religious employers must analyze whether the employee in question qualifies as a minister.

In addition, the bar may or may not apply to other types of suits brought by ministers against their religious employers. Thus, it remains important for religious employers to properly evaluate all employment decisions for potential legal exposure.

For more information on whether, and how, this decision might apply to your organization, contact your regular Fisher Phillips attorney.

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