

# “Ministerial Exception” Bars Ministers’ Discrimination Claims, U.S. Supreme Court Rules

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The U.S. Supreme Court unanimously has recognized the "ministerial exception" under the Establishment and Free Exercise Clauses of the First Amendment and barred employment discrimination suits brought on behalf of ministers against church or religious organizations. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, No. 10-553 (Jan. 11, 2012).

## **The Facts**

Cheryl Perich was a "called" teacher for Hosanna-Tabor Evangelical Lutheran Church and School in Redford, Michigan. Hosanna-Tabor's called teachers have completed certain academic and theological studies and are given the formal title of "Minister of Religion, Commissioned." It also used "lay" teachers who have not completed certain academic courses or are not Lutheran. Lay and called teachers performed the same duties, but Hosanna-Tabor only used lay teachers if no called teachers are available. Perich taught religion, led in prayer and devotional exercises, and conducted chapel services. But a majority of the subjects she taught were not religious.

Perich took a medical leave of absence in 2004. When she tried to return to work, Hosanna-Tabor told her it already had hired a substitute for the school year. Perich later showed up at the school and threatened legal action to get her job back. Hosanna-Tabor fired her because it concluded her behavior violated Lutheran doctrine.

Perich filed a complaint with the Equal Employment Opportunity Commission and the EEOC sued Hosanna-Tabor for retaliation in violation of the Americans with Disabilities Act.

Hosanna-Tabor argued that the "ministerial exception" under the First Amendment barred the discrimination lawsuit. The federal district court agreed and dismissed the suit. The Sixth Circuit, although recognizing the ministerial exception, vacated and remanded the decision of the district court on the grounds that Perich was not considered a "minister."

## **Ministerial Exception is Valid, Enforceable under First Amendment**

In an opinion written by Chief Justice John Roberts, the Court acknowledged the existence of a "ministerial exception," which keeps the government out of church affairs and uniformly has been recognized by the Courts of Appeals, based on the Establishment and Free Exercise Clauses of the First Amendment. This is the first time the Court has considered the ministerial exception. The Court reasoned, "Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. 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 Court overruled the Sixth Circuit, finding the lower court mistakenly had concluded Perich was not a minister. It noted that she was a commissioned teacher, had religious responsibilities and held herself out to be a minister. The secular duties she performed were not determinative. According to the Court, the Sixth Circuit placed too much on the fact that Perich's secular duties consumed most of her workday, while her religious duties took up only 45 minutes. The Court said, "The issue before us ... is not one that can be resolved by a stopwatch."

While the Supreme Court declined to provide a test for deciding whether an employee qualifies as a minister, it made clear that the ministerial exception was not to be construed too narrowly: "Every Court of Appeals to have considered the question has concluded that the ministerial exception is not limited to the head of the religious congregation, and we agree."

The Court also declined to address whether the ministerial exception barred other types of suits by employees, such as breach of contract or tort claims, against their religious employers.

### **What Does This Mean for Employers?**

If an employer is a church or other religious organization, it cannot be sued by a minister for employment discrimination. The Court's decision addresses only suits brought by ministers and should not be read to include workers who cannot be considered ministers. The decision does not establish a specific framework for identifying who qualifies as a minister. Rather, such determinations will be made on a case-by-case basis. While a pastor or other clearly identified religious leader may be easily categorized as a minister, other individuals working for the church or religious organization may not. The factors the Court found relevant in this case include the understanding of the employer and employee, an official acknowledgment of the position, and having religious duties.