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Supreme Court Recognizes "Ministerial Exception" to Employment Discrimination Laws

By Jerilyn Jacobs, Esq.

Last week, the United States Supreme Court ruled for the first time that the First Amendment bars suits by ministers against their churches under employment discrimination laws. The ruling, however, is not limited to those individuals who head a congregation or to any one particular religion.

The case, [*Hosanna-Tabor Evangelical Lutheran Church and School*](#), 565 U.S. ____ (2012), involved Cheryl Perich, a commissioned minister of the Hosanna-Tabor Evangelical Lutheran Church and School (Hosanna-Tabor), a member congregation of the Lutheran Church-Missouri Synod. Hosanna-Tabor classifies its school teachers into two categories: called and lay. Called teachers complete certain academic requirements, including a course of collegiate theological study, and must obtain the endorsement of their local Synod district and pass an oral examination. A teacher who meets these requirements may be called by a congregation; once called, a teacher receives the formal title "Minister of Religion, Commissioned."

Lay teachers, by contrast, are not required to be trained by the Missouri Synod, nor are they required to be Lutheran. Although lay and called teachers at Hosanna-Tabor generally perform the same duties, lay teachers are hired only when no called teachers are available.

Perich began her employment with Hosanna-Tabor as a lay teacher in 1999. At that time, she had already undergone much of

the required training to become a called teacher, and she completed her training in her first school year. She was then designated a commissioned minister. As a called teacher, she spent most of her time teaching secular subjects, such as math, language arts, social studies, science, gym, art, and music. Perich taught kindergarten during her first four years at Hosanna-Tabor and fourth grade during the 2003-2004 school year. 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. Her religious duties consumed approximately 45 minutes of each workday.

In 2004, Perich developed narcolepsy and began the 2004-2005 school year on disability leave. In January 2005, she notified the school principal that she would be able to report to work the following month. However, the principal informed her that she had been replaced with a lay teacher. The congregation then offered to pay a portion of Perich's health insurance premiums in exchange for her resignation as a called teacher. However, Perich refused to resign and she notified Hosanna-Tabor that she had contacted an attorney and intended to assert her legal rights. In response, Perich's call was rescinded and her employment was terminated. The reason cited was Perich's "insubordination and disruptive behavior," as well as the damage she had done to her "working relationship" with the school by "threatening to take legal action."

Perich filed a charge with the Equal Employment Opportunity Commission (EEOC), claiming that her employment had been terminated in violation of the Americans with Disabilities Act (ADA). The EEOC brought suit against Hosanna-Tabor, alleging that Perich had been fired in retaliation for threatening to file an ADA lawsuit. Perich intervened in the litigation. In defense, Hosanna-Tabor invoked the "ministerial" exception. According to Hosanna-Tabor, Perich was a minister who had been fired for a religious reason - specifically that her threat to sue Hosanna-Tabor violated the Missouri-Synod belief that Christians should resolve their disputes internally.

Federal circuit courts of appeal universally have recognized the ministerial exception as an exception to federal employment discrimination laws, such as the ADA, since the passage of Title VII of the Civil Rights Act of 1964. Grounded in the Establishment and Free Exercise Clauses of the First Amendment, the ministerial exception precludes application of federal employment legislation to claims concerning the employment relationship between a religious institution and its ministers. The underlying rationale is that it would be unconstitutional for the government to contradict a religious organization's determination as to who can act as its minister. Until this point, however, the Supreme Court had never considered the issue.

The District Court agreed with Hosanna-Tabor and held that the ministerial exception applied and granted summary judgment in its favor. The Sixth Circuit, however, reversed the decision, focusing on the fact that the duties of called and lay teachers were identical. It also found it largely determinative that Perich spent the vast majority of her workday teaching secular subjects. Further, while it

did not completely disregard that Perich's title was commissioned minister, it held that such a title was not dispositive of the matter.

The Supreme Court, in a unanimous decision, held that the ministerial exception existed and applied to Perich in this case. Chief Justice Roberts, writing for the Court, examined the history of the Establishment and Free Exercise Clauses of the First Amendment and found that they were meant to ensure that the government would have no role in filling ecclesiastical offices. By applying employment discrimination laws to churches and their ministers, the government would be violating this purpose. After finding that the ministerial exception exists, the Court held that the Sixth Circuit made three errors in reaching its conclusion that Perich was not a minister under the exception.

First, the Court found that the Sixth Circuit was too dismissive of Perich's title of commissioned minister. Although acknowledging that the title of "minister," by itself, did not automatically invoke application of the ministerial exception, the Court held that Perich's religious training and commission as a minister was "surely relevant" to the issue. Second, the Court held that the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as Perich. While it was relevant, it was not dispositive, and lay teachers were only used when called teachers were unavailable.

Finally, the Court held the Sixth Circuit placed too much emphasis on Perich's performance of secular duties. The Court stated that although the amount of time an employee spends on particular activities is relevant in assessing that employee's status, that factor cannot be considered in isolation. Perhaps emphasizing quality over quantity, the Court noted that Perich performed an important role in transmitting the Lutheran faith to the next generation by teaching her students religion four days a week, leading them in prayer three times a day, and taking them to a school-wide chapel service, which she led twice a year by choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. Additionally, in her final year of teaching, she led her fourth grade students in a brief devotional exercise each morning. The Court also noted that Perich held herself out as a minister of the Church by claiming a special housing allowance on her taxes that was available only to employees earning their compensation "in the exercise of the ministry."

While holding that the ministerial exception applied in this particular instance, the Court expressly stated that it was not adopting a bright-line formula for deciding who qualifies as a "minister" for purposes of the exception. In that regard, employers should take note of the Court's two concurring opinions. First, Justice Thomas opined in his concurrence that courts should not even question a religious organization's "sincere determination" that a given employee is a minister under its own theological tenets. Second, Justices Alito and Kagan wrote separately to note that while the exception is commonly referred to as the "ministerial exception," it is by no means limited in application to those employees called "ministers" or to those religions having "ministers." Rather, they said, it is important for courts to examine the function

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performed by persons who work for religious bodies.

Until the Supreme Court provides further guidance on the exception, lower federal courts will continue to define the contours of the exception on a case-by-case basis.

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