



Supreme Court Holds that ‘Ministerial Exception’ Protects Church from Teacher’s Retaliation Claim

January 19, 2012

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In a significant, unanimous decision last week, the U.S. Supreme Court confirmed that a “ministerial exception” bars employment discrimination actions brought by employees who fall within this exception against religious employers. Relying upon the “religion clauses” of the First Amendment, the Supreme Court held that the exception barred the retaliation claim of a teacher who was also a commissioned minister. *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*

The employee involved in the case, Cheryl Perich, began working for the Hosanna-Tabor Evangelical Lutheran Church and School as an elementary school teacher in 1999. At that time, Perich functioned as a “lay” teacher, meaning that she was not required to be Lutheran or trained in church doctrine. She then completed the requirements to become a “called” teacher and received the formal title of “Minister of Religion, Commissioned.” While lay teachers at Hosanna-Tabor were appointed to one-year renewable terms of employment, called teachers served for an open-ended term, and their call could only be rescinded by a supermajority vote of the congregation. Perich’s job duties were generally the same before and after she became a called teacher, and she continued to teach a variety of secular subjects as well as religion classes.

In 2004, Perich was diagnosed with narcolepsy and began the school year on disability leave. Although Perich was cleared to return to work in February of 2005 and expressed her intent to do so, Hosanna-Tabor’s principal had concerns about Perich returning to the classroom. A dispute between Perich and the school arose and escalated, culminating in Perich’s threat to sue for discrimination, the congregation’s vote to rescind Perich’s call, and the school’s termination of Perich’s employment. Perich then filed a charge with the EEOC, after which the EEOC sued Hosanna-Tabor, alleging that Hosanna-Tabor had retaliated against Perich for threatening to sue for disability discrimination.

The Supreme Court first found that the First Amendment affords a ministerial exception to liability for employment discrimination. The Court also ruled that failing to recognize such an exception would violate the Free Exercise and Establishment clauses of the First Amendment because it would “depriv[e] the church of control over the selection of who will personify its beliefs.” In the words of Chief Justice Roberts, government involvement in determining who should be accepted or retained as a minister “intrudes on more than a mere employment decision”; it is also an unconstitutional interference with a church’s internal governance.

Applying the exception to Perich’s case, the Court relied upon the following factors in concluding that Perich did, indeed, fall within the ministerial exception: (i) Perich was required to complete a substantial amount of religious training, followed by a formal process of commissioning, to become a commissioned minister; (ii) Hosanna-Tabor held Perich out as a minister; (iii) Perich held herself out as a minister in several respects, including taking advantage of a housing allowance



on her taxes available only to ministers; and (iv) Perich's job duties reflected her role in carrying out Hosanna-Tabor's mission, in that she taught religion and led students in prayer. In light of these facts, the Court rejected the EEOC's argument that Perich only spent about 45 minutes per day on religious duties and hence failed to qualify as a minister. The *Hosanna-Tabor* decision is important both for what the Court stated and also for what it left open. This decision marked the first Supreme Court confirmation that a "ministerial exception" actually exists; previously, this exception had been widely applied by lower courts but never addressed by the Supreme Court. The decision was also significant because it recognized the potential application of this exception even if the employee is not a formally ordained priest or minister or engaged primarily in theological instruction or traditional religious functions. The Court declined to adopt a "rigid formula" for deciding when an employee qualifies as a minister and stressed the importance of allowing religious institutions to make this determination. At the same time, however, the Court was careful to emphasize the facts indicating that Perich functioned as a "minister" in the eyes of her employer and that Perich agreed to function in that capacity. In light of the fact-specific nature of this ruling, religious entities need to exercise caution and examine the particular circumstances of each employee's arrangement before determining whether the exception applies.

In addition, the Court expressly did not address whether the exception could be invoked in other types of suits brought by ministers, such as breach of contract or tortious conduct by their employers. Consequently, religious organizations should keep in mind that the ministerial exception presently remains limited to employment discrimination claims and has not yet been applied by the Supreme Court to contract, tort, or state anti-discrimination claims.

Nonetheless, *Hosanna-Tabor* is a significant ruling and a resounding victory for religious organizations. Certainly this decision is likely to inspire additional constitutional challenges to a host of laws that religious institutions view as intrusive upon their First Amendment rights. It remains to be seen how far-reaching the *Hosanna-Tabor* decision may prove to be, but the following is already clear: first, the "ministerial exception" is sound constitutional law; and second, a wider array of employment relationships fall within this exception than might have been supposed.

More Information

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