

Unanimous Supreme Court in *Hosanna-Tabor* Recognizes Ministerial Exception and Affirms Religious Organizations' Rights Under First Amendment.

On January 11, 2012, the United States Supreme Court issued what is perhaps its most significant religious freedom decision yet in this century, strongly upholding the religious hiring rights of religious organizations. In *Hosanna-Tabor Lutheran Evangelical Church and School v. EEOC*, the Supreme Court ruled unanimously in favor of a church employer against a challenge by a discharged schoolteacher that her termination constituted disability discrimination and retaliation in violation of federal employment laws. The Court affirmed that the Establishment and Free Exercise Clauses of the First Amendment require that churches and religious organizations be free from lawsuits brought by a minister under federal employment discrimination laws. The landmark 9-0 decision, coming less than three months after the Supreme Court declined to hear an appeal from the U.S. Court of Appeals for the Ninth Circuit's decision in [the World Vision case](#), provides a strong reaffirmation of the First Amendment basis for religious organizations' hiring and firing rights.

The plaintiff in *Hosanna-Tabor* was a teacher who had been "called" and commissioned as a Minister of Religion by the church after undergoing a course of religious and academic study and passing an examination. While she taught religion courses four days a week, the majority of the subjects the plaintiff taught to her fourth grade students were "secular" courses. In addition, the plaintiff led the students daily in devotional exercises and took turns with other teachers in leading a weekly school-wide chapel service. The church and school replaced her with a lay teacher when the plaintiff was on several months disability leave for treatment of her narcolepsy. When she refused to resign and threatened legal action against the church and school, Hosanna-Tabor terminated her. The federal Equal Employment Opportunity Commission ("EEOC") brought a suit against the church and school on her behalf, alleging discrimination and retaliation under the federal Americans With Disabilities Act ("ADA"). The district court dismissed the case under the First Amendment's well-established "ministerial exception," which has been recognized by a number of lower courts as protecting decisions by religious organizations about the hiring and firing of employees serving in "ministerial" positions, and the Sixth Circuit reversed.

In deciding unanimously that the ministerial exception barred the plaintiff's ADA claim against Hosanna-Tabor, the Supreme Court stated that it did not want to adopt a rigid formula for determining who qualified as a minister. Instead, the Court held that the plaintiff was a minister based on "the formal title given [the plaintiff] by the Church, the substance reflected in that title, her own use of that title,¹ and the important religious functions she performed for the Church." Reversing the Sixth Circuit's decision, the Court stated that the employee's title, while not determinative of the issue, should be a factor in determining whether or not an

¹ The Supreme Court noted that the plaintiff had claimed a special housing allowance on her taxes that is only available to ministers serving "in the exercise of the ministry" and referred to herself several times in written correspondence as serving in a "teaching ministry."

employee was a minister. In this instance, because the employee's title was obtained after rigorous schooling and a commission as Minister of Religion by a majority vote of the congregation, the Court found there to be sufficient "substance" behind her title. Additionally, the Court stated that the fact that "lay" employees performed similar or identical duties to the "ministerial" employee need not be determinative against a finding that a particular employee is a minister. This was particularly the case, stated the Court, where lay employees were hired only when commissioned employees were unavailable, as was the case in *Hosanna-Tabor*. Finally, the Court stated that the fact that an employee spent only a small amount of time each day performing religious duties was not determinative and was only one factor to be considered along with the other facts in the case.²

The Court also rejected the EEOC's contention that Hosanna-Tabor's argument – that the plaintiff employee's threat of legal action violated the church's commitment to internal dispute resolution as prescribed by the Bible – was a religious pretext for retaliating against the plaintiff for her litigation threat. Instead, the Court stated that the EEOC's "suggestion misses the point of the ministerial exception. The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception ensures instead that the authority to select and control who will minister to the faith—a matter 'strictly ecclesiastical'— is the church's alone."

The *Hosanna-Tabor* decision is a momentous one for religious employers, affirming that "the selection of those who will personify [their] beliefs" belongs solely to the religious employer. However, the Court's decision does not resolve the question of how to determine who qualifies as a minister. Furthermore, the decision is limited to "an employment discrimination suit brought on behalf of a minister challenging her church's decision to fire her." Therefore, its impact on other types of suits by ministers against their religious employers – such as breach of contract, tortious conduct, or under other employment statutes such as the Fair Labor Standards Act or the Family Medical Leave Act – remains to be seen. Nonetheless, the unanimity of the decision and its discussion of factors to consider will likely have a substantial impact on how trial and appellate courts approach similar cases.

To discuss whether your religious organization is best positioned to fall within the reasoning and protections of the *Hosanna-Tabor* decision, please contact [Scott Ward](#) or [Mae Cheung](#) at 703-761-5000.

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² The Sixth Circuit had placed particular emphasis on the fact that the plaintiff was only engaged in religious duties for 45 minutes each day.