

PUBLICATION

Supreme Court Upholds Ministerial Exception in Discriminatory Termination Lawsuit

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On January 11, 2012, the United States Supreme Court ruled that a "ministerial exception" to employment discrimination laws bars certain employees of religious purpose entities from bringing employment discrimination lawsuits against their employers (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, No. 10-533).

Under Title VII, religious organizations and schools have a right to limit employment in certain positions to individuals of the same faith. The statute also allows these employers to make employment decisions that promote the religious principles for which the entity is maintained or has been established. Accordingly, federal courts have long recognized a "ministerial exception" to several employment discrimination laws for those employees who perform religious functions. The Supreme Court's decision clarifies, and likely extends, the scope of this ministerial exception.

In *Hosanna-Tabor*, the EEOC brought suit against a Lutheran school alleging disability discrimination on behalf of Cheryl Perich. Ms. Perich alleged she was fired for threatening ADA action after she notified the school she had been diagnosed with narcolepsy, upon which the school hired another teacher and suggested she resign due to her medical condition. The trial court dismissed the suit, finding that Perich could not sue her employer on account of the ministerial exception. The Sixth Circuit Court of Appeals reversed, stating that Perich did not qualify for the exception because she spent most of her time teaching secular, rather than religious, subjects.

The Supreme Court reversed the Sixth Circuit, deciding that the ministerial exception applies to more than just those individuals who are ordained clergy or members of religious orders. In this case, the plaintiff had received the title "Minister of Religion, Commissioned" and instructed students in prayer. Accordingly, Chief Justice Roberts found that the ministerial exception applied to Perich even though she spent just 45 minutes each day on religious functions. In reaching this decision, the Court noted that the duties of individuals working in religious schools are often mixed, and that the comparative amount of time spent on religious duties cannot be "resolved by a stopwatch."

In a concurring opinion, Justice Alito maintained that the ministerial exception should apply to any employee "who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith." If adopted, Justice Alito's opinion would extend the ministerial exception to individuals who hold positions other than those that teach or "minister" the faith. For example, the ministerial exception may apply to executive leadership positions that ensure compliance with religious identity and principles during the day-to-day operation.