

One Minute Memo[®]



SUPREME COURT BLESSES MINISTERIAL EXCEPTION TO ADA RETALIATION CLAIM

On January 11, 2012, in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the U.S. Supreme Court issued its first decision on the “ministerial exception.” The Court held that this judicial doctrine barred a claim that a religious school retaliated against a “called” teacher after she claimed she had been discriminated against because of her disability, narcolepsy.

Case Background

Cheryl Perich worked for Hosanna-Tabor, a K-8 school belonging to the Lutheran Church-Missouri Synod. Perich was a “called” teacher, a teacher who is regarded as having been called to teaching by God and who receives the formal title “Minister of Religion, Commissioned.” As part of her duties, Perich held herself out as a minister, conveyed the Church’s message and carried out its mission. She taught students religion four days a week, and led them in prayer three times a day.

In mid-2004, Perich became ill with narcolepsy. The school, doubting that Perich could continue her duties, asked her to resign. She refused and attempted to return to work once she was cleared to do so by her physician. The school then rescinded Perich’s call and terminated her employment.

Perich filed a charge with the Equal Employment Opportunity Commission. The EEOC sued Hosanna-Tabor, claiming that Perich had been fired in retaliation for threatening to sue under the Americans With Disabilities Act. (The ADA contains two partial religious employer exemptions, neither of which applies to the prohibition against retaliation.)

In defense of the claim, Hosanna-Tabor argued that Perich was a minister who had been fired for a religious reason – threatening to sue the church in violation of the Synod’s belief that Christians should resolve their disputes internally. The District Court determined that the suit was barred by the ministerial exception and granted summary judgment to Hosanna-Tabor. The Sixth Circuit Court of Appeals reversed, concluding that Perich was not a “minister” under the exception.

The Supreme Court’s Decision

The Supreme Court’s majority opinion, authored by Chief Justice Roberts, began with a discussion of the history of the concept that governments should not interfere with the internal workings of religious organizations. The discussion began with the Magna Carta, proceeded to the Puritans’ arrival in the United States, and culminated with citations to the works of James Madison.

The Supreme Court noted that although this was the Court’s first occasion to consider whether the “freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment,” the Courts of Appeal had uniformly recognized the existence of a ministerial exception grounded in the First Amendment, which precludes claims concerning the employment relationship between a religious organization and its ministers.

Seyfarth Shaw — One Minute Memo

The Supreme Court agreed that such a ministerial exception exists, and that requiring a church to employ an unwanted minister would interfere with the church's internal governance, thereby depriving the church of a power to select those who will personify its beliefs. The imposition of an unwanted minister, according to the majority, would infringe the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. The majority also found that judicial involvement in the ministerial selection would violate the Establishment Clause, which prohibits government involvement in ecclesiastical decisions.

Having concluded that a ministerial exception existed, the Court then determined that the exception is not limited to the head of a religious congregation. The exception applied to Perich, the Court concluded, because of her formal title, the substance reflected in that title, her own use of the title, and the important religious functions she performed. In concluding that Perich was a minister, the Court found that the Sixth Circuit had improperly failed to see any relevance in the fact that Perich was a commissioned minister. However, the Court noted that such a title, by itself, would not automatically ensure application of the ministerial exception, and declined to adopt a rigid formula for deciding when an employee qualifies as a minister.

Finally, 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, and that the Sixth Circuit erred by placing too much emphasis on Perich's performance of secular duties.

After thus analyzing the Sixth Circuit decision, the Court went on to reject the argument made by the EEOC and Perich that Hosanna-Tabor's asserted religious reason for terminating Perich – that she violated the Synod's commitment to internal dispute resolution – was pretextual. The Court held that this argument missed the point of the exception, which was not limited to safeguarding a church's decision to terminate a minister only when the termination decision is made for a religious reason.

Justice Thomas, who concurred in the majority opinion, wrote separately to express his view that courts should defer to a religious organization's good faith understanding as to who qualifies as its minister. According to Justice Thomas, the right of a religious organization to select its ministers would be "hollow" if secular courts were allowed to "second guess" the organization's sincere determination that an employee was a minister.

Justice Alito, with whom Justice Kagan joined, filed a separate concurring opinion to clarify his understanding that formal ordination and designation as a "minister" was not necessary for an individual to fall within the ministerial exception.

By: *Jeffrey Berman*

Jeffrey Berman is a partner in Seyfarth's Los Angeles office. If you would like further information, please contact your Seyfarth Shaw LLP attorney or Jeffrey Berman at jberman@seyfarth.com.



www.seyfarth.com

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) © 2012 Seyfarth Shaw LLP. All rights reserved.

Breadth. Depth. Results.