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A RABBI, A PRIEST, A MINISTER AND A TEACHER WALK INTO A CLASSROOM... WHO IS COVERED BY THE "MINISTERIAL EXCEPTION"?

By Heather Broadwater, Caryn Pass and Grace Lee

Caryn Pass
cpass@Venable.com
202.344.8039

Grace Lee
glee@Venable.com
202.344.8043

Heather Broadwater
hbroadwater@Venable.com
202.344.8042

In a recent unanimous decision, the United States Supreme Court squarely applied the "ministerial exception" to bar claims of employment discrimination and retaliation brought by certain employees against religious organizations, including religious independent schools. In this case, a teacher who was fired after threatening to bring a claim of discrimination was deemed to be a "minister" and, thus, not protected by anti-discrimination laws. Based on the principles of separation of church and state, and the First Amendment rights of religious entities, the Supreme Court's decision strengthens the ministerial exception and provides religious schools with broader protections against claims of workplace discrimination and retaliation.

Background

On January 11, 2012, the Supreme Court issued an opinion in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* exempting religious organizations from compliance with EEOC discrimination laws under a new application of the "ministerial exception." The case involved a claim of discrimination and retaliation brought by a teacher at an Evangelical Church and School under the Americans with Disabilities Act ("ADA"). The teacher attempted to return to work after disability leave related to narcolepsy, but was told her position had been filled. Although she provided a doctor's note clearing her to return to work, the church would not restore her to her position, and offered to pay a portion of her health insurance premiums in exchange for her resignation. The teacher refused to resign and threatened to take legal action. She was then terminated on grounds of "insubordination and disruptive behavior" and for the damage she caused to her "working relationship" because she had threatened a lawsuit.

The teacher filed a charge with the EEOC claiming termination in violation of the ADA. The EEOC brought a suit against the employer on her behalf claiming she had been fired in retaliation for threatening to file a lawsuit.

Courts Decision

The Supreme Court held that under the 1st Amendment's Free Exercise and Establishment Clause, the "ministerial exception" barred employment discrimination suits brought by a "minister". The Court declined to adopt a firm definition of "minister" and was reluctant to "adopt a rigid formula for deciding when an employee qualifies as a minister," however it did make clear that the ministerial exception is not limited to ordained religious leaders or the head of a religious organization.

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In this case, the teacher's primary responsibilities were non-religious. She taught non-religious classes the majority of the week, but taught religious classes four days a week for 30 minutes, attended chapel with her class once a week, lead class prayer three times a day, and twice a year lead chapel services. She was also labeled a "called" teacher by the church, as opposed to a "lay" teacher. The church considered "called" teachers to be religious ministers and required them to complete a course of theological study, pass an oral exam by a faculty committee, and be approved by their local church district before they are considered "called". "Lay" teachers, unlike "called" teachers, were contract workers and are not commissioned by the church. "Lay" teachers were not required to complete any theological coursework or to even be Lutheran. When she took leave due to her illness, her position was filled with a "lay" teacher, who performed the same tasks.

In deciding that the teacher was a "minister" in this case, the Court considered all the circumstances of her employment weighed many factors, including: (1) the church held the teacher out as a minister, (2) the teacher's title reflected religious training followed by a formal process of commissioning, (3) the teacher held herself out as a minister of the church, and (4) the teacher's job duties reflected a role in carrying out the message and mission of the church.

Impact of Decision on Independent Schools

This decision has the potential to have wide impact on religious independent schools. The Court indicated it would defer to the parochial school to define internally who would be considered a "minister," and the Court would be highly reluctant to challenge that claim. The Court has indicated it will defer to parochial schools to define which employees are considered ministers, regardless of the extent of their religious responsibilities or involvement or the amount of time spent on religious responsibilities. The Court's reluctance to get involved in decisions made by the church regarding ministers could potentially be extended beyond EEOC discrimination to include other lawsuits brought by employees against religious organizations.

"Ministerial Exception" Not a Guaranteed Bar of EEOC Claims

It is important to note that while this decision is a significant barrier for employees bringing a claim of workplace discrimination, it does not necessarily bar all lawsuits. Instead it provides a defense to EEOC claims brought by employees or former employees who qualify as "ministers," which will be determined on a case-by-case basis.

Caryn Pass, Grace Lee and Heather Broadwater are lawyers in the Independent School Law Practice at Venable LLP. They represent independent schools nationwide on a wide range of legal issues.