

**ALERTS**

## Supreme Court Decision of Interest for Religious Schools

**March 5, 2012**

In a recent unanimous decision, the United States Supreme Court held that the First Amendment protects religious organizations', including religious schools', employment decisions regarding ministers, from the anti-discrimination laws. The Courts of Appeals have long recognized the ministerial exception, a First Amendment doctrine that bars most employment-related lawsuits brought against religious organizations by employees that perform religious functions. On Jan. 11, 2012, in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al.*, the Supreme Court acknowledged the ministerial exception, finding that it is based in the Establishment and Free Exercise Clauses of the First Amendment (the "Religion Clauses").

The Supreme Court reasoned that because the First Amendment was adopted against a background of controversy between churches and the state over religious offices, the framers of the First Amendment intended that the Religion Clauses prevent the government from appointing ministers and from interfering with the freedom of religious groups to select their own ministers. Upon recognizing the ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church and School*, the Supreme Court further concluded that it protects from the anti-discrimination laws a religious group's decision to terminate a teacher who was also one of the group's ministers.

Hosanna-Tabor Evangelical Lutheran Church and School operates a kindergarten-through-eighth-grade school that offers its students a "Christ-centered education," and employs both "lay" and "called"

teachers. “Called” teachers are regarded as having been called to their vocation by God, must satisfy certain academic requirements (including Lutheran religious training) and receive a call from a congregation. Once called, the teacher receives the title of “Minister of Religion, Commissioned.” Cheryl Perich was employed by Hosanna Tabor as a called kindergarten teacher, which included teaching a religion class, leading the children in devotional exercises each day and attending a weekly school-wide chapel. Perich took disability leave at the beginning of the 2004-2005 school year after developing narcolepsy. Upon attempting to return to work in February 2005, Perich was notified that her position had been filled by a lay teacher for the remainder of the school year. Perich protested, stating that she had spoken with an attorney regarding her legal rights, and was then terminated. Subsequently, she filed a claim with the Equal Employment Opportunity Commission (the “EEOC”) claiming discrimination and retaliation pursuant to the Americans with Disabilities Act (“ADA”). The EEOC proceeded to file suit against Hosanna-Tabor alleging that Perich was terminated for threatening to file an ADA lawsuit.

In reversing the Sixth Circuit’s decision, the Supreme Court recognized the ministerial exception grounded in the First Amendment, but rejected the Circuit Court’s conclusion that Perich did not qualify as a minister because her job consisted of largely the same duties performed by a lay teacher. Adopting a totality of the circumstances approach, the Supreme Court concluded that Perich’s minister status was supported by several factors, including her title, training and employment duties. The Sixth Circuit erred by placing too much emphasis on the similarities between the responsibilities of the lay teachers and the called teachers, and Perich’s performance of secular duties, and placing too little emphasis on the fact that Perich was a commissioned minister. The Supreme Court concluded that dismissal of the employment discrimination suit is required by the First Amendment as Perich is a minister within the meaning of the exception.

While the Supreme Court’s application of the ministerial exception in the context of an employment discrimination lawsuit is significant and new, its holding is limited. In its opinion, the Supreme Court refused to provide a rigid formula for determining when an employee qualifies as a minister. Further, it remained silent on whether the exception applies in other employment contexts, such as when an employee claims breach of contract or tortious conduct by his/her religious employer. Consequently,

although schools with religious affiliations and their employees should be aware of the applicability of the ministerial exception to employment discrimination lawsuits, future litigation will be necessary to determine how broadly this exception will apply.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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