

**HOSANNA-TABOR EVANGELICAL LUTHERAN CHURCH AND SCHOOL v.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
132 S. Ct. 694 (2012)

CHIEF JUSTICE ROBERTS delivered the opinion for a unanimous Court.

Certain employment discrimination laws authorize employees who have been wrongfully terminated to sue their employers for reinstatement and damages. The question presented is whether the Establishment and Free Exercise Clauses of the First Amendment bar such an action when the employer is a religious group and the employee is one of the group's ministers.

I

Petitioner Hosanna-Tabor Evangelical Lutheran Church and School is a member congregation of the Lutheran Church-Missouri Synod, the second largest Lutheran denomination in America. Hosanna-Tabor operated a small school in Redford, Michigan, offering a "Christ-centered education" to students in kindergarten through eighth grade.

The Synod classifies teachers into two categories: "called" and "lay." "Called" teachers are regarded as having been called to their vocation by God through a congregation. To be eligible to receive a call from a congregation, a teacher must satisfy certain academic requirements. One way of doing so is by completing a "colloquy" program at a Lutheran college or university. The program requires candidates to take eight courses of theological study, obtain the endorsement of their local Synod district, and pass an oral examination by a faculty committee. A teacher who meets these requirements may be called by a congregation. Once called, a teacher receives the formal title "Minister of Religion, Commissioned." A commissioned minister serves for an open-ended term; at Hosanna-Tabor, a call could be rescinded only for cause and by a supermajority vote of the congregation.

"Lay" or "contract" teachers, by contrast, are not required to be trained by the Synod or even to be Lutheran. At Hosanna-Tabor, they were appointed by the school board, without a vote of the congregation, to one-year renewable terms. Although teachers at the school generally performed the same duties regardless of whether they were lay or called, lay teachers were hired only when called teachers were unavailable.

Respondent Cheryl Perich was first employed by Hosanna-Tabor as a lay teacher in 1999. After Perich completed her colloquy later that school year, Hosanna-Tabor asked her to become a called teacher. Perich accepted the call and received a "diploma of vocation" designating her a commissioned minister.

Perich taught kindergarten during her first four years at Hosanna-Tabor and fourth grade during the 2003-2004 school year. She taught math, language arts, social studies, science, gym, art, and music. She also taught a religion class four days a week, led the students in prayer and devotional exercises each day, and attended a weekly school-wide chapel service. Perich led the chapel service herself about twice a year.

Perich became ill in June 2004 with what was eventually diagnosed as narcolepsy. Symptoms included sudden and deep sleeps from which she could not be roused. Because of her

illness, Perich began the 2004-2005 school year on disability leave. On January 27, 2005, however, Perich notified the school principal, Stacey Hoeft, that she would be able to report to work the following month. Hoeft responded that the school had already contracted with a lay teacher to fill Perich's position for the remainder of the school year. Hoeft also expressed concern that Perich was not yet ready to return to the classroom.

On January 30, Hosanna-Tabor held a meeting of its congregation at which school administrators stated that Perich was unlikely to be physically capable of returning to work that school year or the next. The congregation voted to offer Perich a "peaceful release" from her call, whereby the congregation would pay a portion of her health insurance premiums in exchange for her resignation as a called teacher. Perich refused to resign. The school board urged Perich to reconsider, informing her that the school no longer had a position for her, but Perich stood by her decision not to resign.

On the morning of February 22--the first day she was medically cleared to return to work-- Perich presented herself at the school. Hoeft asked her to leave but she would not do so until she obtained written documentation that she had reported to work. Later that afternoon, Hoeft called Perich at home and told her that she would likely be fired. Perich responded that she had spoken with an attorney and intended to assert her legal rights.

Following a school board meeting that evening, board chairman Scott Salo sent Perich a letter stating that Hosanna-Tabor was reviewing the process for rescinding her call in light of her "regrettable" actions. Salo subsequently followed up with a letter advising Perich that the congregation would consider whether to rescind her call at its next meeting. As grounds for termination, the letter cited Perich's "insubordination and disruptive behavior" on February 22, as well as the damage she had done to her "working relationship" with the school by "threatening to take legal action." The congregation voted to rescind Perich's call on April 10, and Hosanna-Tabor sent her a letter of termination the next day.

Perich filed a charge with the Equal Employment Opportunity Commission, alleging that her employment had been terminated in violation of the Americans with Disabilities Act. The ADA prohibits an employer from discriminating against a qualified individual on the basis of disability. §12112(a). It also prohibits an employer from retaliating "against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA]." §12203(a).¹

The EEOC brought suit against Hosanna-Tabor, alleging that Perich had been fired in

¹ The ADA itself provides religious entities with two defenses to claims of discrimination that arise under subchapter I of the Act. The first provides that "[t]his subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such [entity] of its activities" The second provides that "[u]nder this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization." The EEOC and Perich contend, and Hosanna-Tabor does not dispute, that these defenses do not apply to retaliation claims.

retaliation for threatening to file an ADA lawsuit. Perich intervened in the litigation, claiming unlawful retaliation under the ADA. Hosanna-Tabor moved for summary judgment. Invoking what is known as the "ministerial exception," the Church argued that the suit was barred by the First Amendment because the claims at issue concerned the employment relationship between a religious institution and one of its ministers. According to the Church, Perich was a minister, and she had been fired for a religious reason--namely, that her threat to sue the Church violated the Synod's belief that Christians should resolve their disputes internally.

The District Court agreed that the suit was barred by the ministerial exception and granted summary judgment in Hosanna-Tabor's favor. The Court of Appeals for the Sixth Circuit vacated and remanded, directing the District Court to proceed to the merits of Perich's retaliation claims. The Court of Appeals concluded that Perich did not qualify as a "minister" under the exception. We granted certiorari.

II

Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers. Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church. By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ensured that the new Federal Government--unlike the English Crown--would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.

This understanding of the Religion Clauses was reflected in two events involving James Madison. The first occurred in 1806, when John Carroll, the first Catholic bishop in the United States, solicited the Executive's opinion on who should be appointed to direct the affairs of the Catholic Church in the territory newly acquired by the Louisiana Purchase. After consulting with President Jefferson, then-Secretary of State Madison responded that the selection of church "functionaries" was an "entirely ecclesiastical" matter left to the Church's own judgment. The "scrupulous policy of the Constitution in guarding against a political interference with religious affairs," Madison explained, prevented the Government from rendering an opinion on the "selection of ecclesiastical individuals."

The second episode occurred in 1811, when Madison was President. Congress had passed a bill incorporating the Protestant Episcopal Church in the District of Columbia. Madison vetoed the bill, on the ground that it "exceeds the rightful authority to which Governments are limited, by the essential distinction between civil and religious functions, and violates the article of the Constitution, which declares, that 'Congress shall make no law respecting a religious establishment.'"

Given this understanding of the Religion Clauses--and the absence of government employment regulation generally--it was some time before questions about government interference with a church's ability to select its own ministers came before the courts. This Court touched upon the issue indirectly, however, in the context of disputes over church property. Our decisions in that area confirm that it is impermissible for the government to contradict a church's

determination of who can act as its ministers.

In *Watson v. Jones*, 80 U.S. 679 (1872), the Court considered a dispute between antislavery and proslavery factions over who controlled the property of the Walnut Street Presbyterian Church in Louisville, Kentucky. The General Assembly of the Presbyterian Church had recognized the antislavery faction, and this Court declined to question that determination. We explained that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as binding on them." As we would put it later, our opinion in *Watson* "radiates ... a spirit of freedom for religious organizations, an independence from secular control or manipulation--in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94, 116 (1952).

Confronting the issue under the Constitution for the first time in *Kedroff*, the Court recognized that the "[f]reedom to select the clergy, where no improper methods of choice are proven," is "part of the free exercise of religion" protected by the First Amendment against government interference.

This Court reaffirmed these First Amendment principles in *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevic*, 426 U. S. 696 (1976), a case involving a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church. The Church had removed Dionisije Milivojevic as bishop of the American-Canadian Diocese because of his defiance of the church hierarchy. Following his removal, Dionisije brought a civil action in state court challenging the Church's decision, and the Illinois Supreme Court "purported in effect to reinstate Dionisije as Diocesan Bishop," on the ground that the proceedings resulting in his removal failed to comply with church laws and regulations.

Reversing that judgment, this Court explained that the First Amendment "permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." When ecclesiastical tribunals decide such disputes, we further explained, "the Constitution requires that civil courts accept their decisions as binding upon them." We thus held that by inquiring into whether the Church had followed its own procedures, the State Supreme Court had "unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals" of the Church.

Until today, we have not had occasion to consider whether this freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment. The Courts of Appeals, in contrast, have had extensive experience with this issue. Since the passage of Title VII of the Civil Rights Act of 1964 and other employment discrimination laws, the Courts of Appeals have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers.

We agree that there is such a ministerial exception. The members of a religious group put

their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According to the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

The EEOC and Perich contend that our decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990), precludes recognition of a ministerial exception. In *Smith*, we held that the "right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."

It is true that the ADA's prohibition on retaliation, like Oregon's prohibition on peyote use, is a valid and neutral law of general applicability. But a church's selection of its ministers is unlike an individual's ingestion of peyote. *Smith* involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself. See *id.* at 877 (distinguishing the government's regulation of "physical acts" from its "lend[ing] its power to one or the other side in controversies over religious authority or dogma"). The contention that *Smith* forecloses recognition of a ministerial exception rooted in the Religion Clauses has no merit.

III

Having concluded that there is a ministerial exception grounded in the Religion Clauses of the First Amendment, we consider whether the exception applies in this case. We hold that it does.

Every Court of Appeals to have considered the question has concluded that the ministerial exception is not limited to the head of a religious congregation, and we agree. We are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us to conclude, in this our first case involving the ministerial exception, that the exception covers Perich, given all the circumstances of her employment.

To begin with, Hosanna-Tabor held Perich out as a minister, with a role distinct from that of most of its members. When Hosanna-Tabor extended her a call, it issued her a "diploma of vocation" according her the title "Minister of Religion, Commissioned." She was tasked with performing that office "according to the Word of God and the confessional standards of the Evangelical Lutheran Church as drawn from the Sacred Scriptures." In a supplement to the diploma, the congregation undertook to periodically review Perich's "skills of ministry" and "ministerial responsibilities," and to provide for her "continuing education as a professional person in the ministry of the Gospel."

Perich's title as a minister reflected a significant degree of religious training followed by a formal process of commissioning. To be eligible to become a commissioned minister, Perich had

to complete eight college-level courses in subjects including biblical interpretation, church doctrine, and the ministry of the Lutheran teacher. She also had to obtain the endorsement of her local Synod district. Finally, she had to pass an oral examination by a faculty committee at a Lutheran college. It took Perich six years to fulfill these requirements. And when she eventually did, she was commissioned as a minister only upon election by the congregation, which recognized God's call to her to teach. At that point, her call could be rescinded only upon a supermajority vote of the congregation--a protection designed to allow her to "preach the Word of God boldly."

Perich held herself out as a minister of the Church by accepting the formal call to religious service, according to its terms. She did so in other ways as well. For example, she claimed a special housing allowance on her taxes that was available only to employees earning their compensation "in the exercise of the ministry." In a form she submitted to the Synod following her termination, Perich again indicated that she regarded herself as a minister at Hosanna-Tabor, stating: "I feel that God is leading me to serve in the teaching ministry I am anxious to be in the teaching ministry again soon."

Perich's job duties reflected a role in conveying the Church's message and carrying out its mission. Hosanna-Tabor expressly charged her with "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church." In fulfilling these responsibilities, Perich taught her students religion four days a week, and led them in prayer three times a day. Once a week, she took her students to a school-wide chapel service, and--about twice a year--she took her turn leading it, choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. During her last year of teaching, Perich also led her fourth graders in a brief devotional exercise each morning. As a source of religious instruction, Perich performed an important role in transmitting the Lutheran faith to the next generation.

In light of these considerations--the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church--we conclude that Perich was a minister covered by the ministerial exception.

In reaching a contrary conclusion, the Court of Appeals committed three errors. First, the Sixth Circuit failed to see any relevance in the fact that Perich was a commissioned minister. Although such a title, by itself, does not automatically ensure coverage, the fact that an employee has been ordained or commissioned as a minister is surely relevant, as is the fact that significant religious training and a recognized religious mission underlie the description of the employee's position.

Second, the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as Perich. We express no view on whether someone with Perich's duties would be covered by the ministerial exception in the absence of the other considerations we have discussed. But though relevant, it cannot be dispositive that others not formally recognized as ministers by the church perform the same functions--particularly when, as here, they did so only because commissioned ministers were unavailable.

Third, the Sixth Circuit placed too much emphasis on Perich's performance of secular duties. It is true that her religious duties consumed only 45 minutes of each workday, and that the rest of her day was devoted to teaching secular subjects. The EEOC regards that as conclusive, contending that any ministerial exception "should be limited to those employees who perform exclusively religious functions." We cannot accept that view. Indeed, we are unsure whether any such employees exist. The heads of congregations themselves often have a mix of duties, including secular ones such as helping to manage the congregation's finances, supervising purely secular personnel, and overseeing the upkeep of facilities.

Although the Sixth Circuit did not adopt the extreme position pressed here by the EEOC, it did regard the relative amount of time Perich spent performing religious functions as largely determinative. The issue before us, however, is not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant in assessing that employee's status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations discussed above.

Because Perich was a minister within the meaning of the exception, the First Amendment requires dismissal of this employment discrimination suit against her religious employer.

The EEOC and Perich suggest that Hosanna-Tabor's asserted religious reason for firing Perich--that she violated the Synod's commitment to internal dispute resolution--was pretextual. That 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 instead ensures that the authority to select and control who will minister to the faithful--a matter "strictly ecclesiastical," is the church's alone.

IV

The EEOC and Perich foresee a parade of horrors that will follow our recognition of a ministerial exception to employment discrimination suits. According to the EEOC and Perich, such an exception could protect religious organizations from liability for retaliating against employees for reporting criminal misconduct or for testifying before a grand jury or in a criminal trial. What is more, the EEOC contends, the logic of the exception would confer on religious employers "unfettered discretion" to violate employment laws by, for example, hiring children or aliens not authorized to work in the United States.

Hosanna-Tabor responds that the ministerial exception would not in any way bar criminal prosecutions for interfering with law enforcement investigations or other proceedings. Nor, according to the Church, would the exception bar government enforcement of general laws restricting eligibility for employment, because the exception applies only to suits by or on behalf of ministers themselves. Hosanna-Tabor also notes that the ministerial exception has been around in the lower courts for 40 years and has not given rise to the dire consequences predicted by the EEOC and Perich.

The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious

employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise.

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

THOMAS, J., concurring

I join the Court's opinion. I write separately to note that, in my view, the Religion Clauses require civil courts to apply the ministerial exception and to defer to a religious organization's good-faith understanding of who qualifies as its minister. The Court thoroughly sets forth the facts that lead to its conclusion that Cheryl Perich was one of Hosanna-Tabor's ministers, and I agree that these facts demonstrate Perich's ministerial role. But the evidence demonstrates that Hosanna-Tabor sincerely considered Perich a minister. That would be sufficient for me to conclude that Perich's suit is barred by the ministerial exception.

JUSTICE ALITO, with whom JUSTICE KAGAN joins, concurring.

I join the Court's opinion, but I write separately to clarify my understanding of the significance of formal ordination and designation as a "minister" in determining whether an "employee" of a religious group falls within the "ministerial" exception. The term "minister" is commonly used by many Protestant denominations to refer to members of their clergy, but the term is rarely if ever used in this way by Catholics, Jews, Muslims, Hindus, or Buddhists. In addition, the concept of ordination as understood by most Christian churches and by Judaism has no clear counterpart in some Christian denominations and some other religions. Because virtually every religion in the world is represented in the population of the United States, it would be a mistake if the term "minister" or the concept of ordination were viewed as central to the important issue of religious autonomy that is presented in cases like this one. Instead, courts should focus on the function performed by persons who work for religious bodies.

The First Amendment protects the freedom of religious groups to engage in certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith. Accordingly, religious groups must be free to choose personnel who are essential to the performance of these functions.

The "ministerial" exception should be tailored to this purpose. It 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 a religious group believes that the ability of such an employee to perform these key functions has been compromised, then the constitutional guarantee of religious freedom protects the group's right to remove the employee from his or her position.