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The Supreme Court Strengthens “Ministerial Exception” that Protects Religious Organizations from Employment Discrimination Lawsuits

On July 8, 2020, the Supreme Court of the United States issued a 7-2 decision in *Our Lady of Guadalupe School v. Morrissey-Berru* broadening the so-called “ministerial exception” to federal employment discrimination laws. In its decision, the Court found that the First Amendment barred the application of such laws to teachers at religious schools in the same manner as it did for ministers.

Background

The decision resolved two cases, in which two teachers filed lawsuits accusing their employers, Catholic elementary schools in California, of employment discrimination under federal law. In the first case, Agnes Morrissey-Berru, was employed at Our Lady of Guadalupe School (“OLG”) as a lay fifth or sixth grade teacher. She taught all subjects, including religion, to her students. In addition to providing religious instruction, Ms. Morrissey-Berru prayed with her students each day and prepared them for participation in the Mass. Each year of her employment with the school, Ms. Morrissey-Berru entered into an employment agreement that set out the school’s mission and her duties. The agreement provided that the school’s mission was “to develop and promote a Catholic School Faith Community,” and all her duties and responsibilities as a teacher were to be performed within this overriding commitment. The agreement also explained that the school’s hiring and retention decisions would be guided by the school’s Catholic mission. Teachers were also expected to model and promote Catholic faith and

morals. The agreement also highlighted that the teacher could be terminated “for cause” for failing to carry out these duties or for conduct that brings discredit upon the school or the Church.

After many years at the school, OLG moved Ms. Morrissey-Berru from a full-time to a part-time position. The school refused to renew her contract the following year. Ms. Morrissey-Berru filed a lawsuit for age discrimination under the Age Discrimination in Employment Act of 1967 claiming that the school failed to renew her contract so it could replace her with a younger teacher. OLG maintained that its decision was based on classroom performance, including Ms. Morrissey-Berru’s difficulty in administering a new reading and writing program. OLG was successful in the lower court by invoking the “ministerial exception,” but the Ninth Circuit reversed on the basis that Ms. Morrissey-Berru did not have the formal title of “minister,” had limited formal religious training, and “did not hold herself out to the public as a religious leader or minister.” 769 F. App’x 460 (9th Cir.)

In the second case, Kristen Biel, worked as a lay teacher for a year and a half at St. James School (“St. James”), a Catholic elementary school, in which she taught all subjects, including religion. Ms. Biel’s employment agreement was nearly identical to Ms. Morrissey-Berru’s agreement, particularly with regards to the school’s religious mission and Ms. Biel’s duties in carrying out the mission. Ms. Biel also prayed with her students each day and prepared them to be active participants at Mass. After one full year at St. James, the school declined to renew Ms. Biel’s contract. Ms. Biel filed a lawsuit alleging that she was discharged because she had requested a leave of absence to obtain treatment for breast cancer. St. James claimed its decision was based on her poor performance, specifically, her failure to observe the planned curriculum and keep an orderly classroom. Similar to OLG, at the lower court level, St. James obtained summary judgment under the “ministerial exception,” but the Ninth Circuit again reversed. It ruled that Ms. Biel lacked the credentials, training, and ministerial background to meet the exception. 911 F.3d 603 (9th Cir. 2018)

The Supreme Court granted review and consolidated these cases to determine whether the “ministerial exception” applied.

The Decision

In arriving at its decision that the “ministerial exception” barred these lawsuits, the Supreme Court determined that the Ninth Circuit had too rigidly applied the factors set forth by the Supreme Court in an earlier ministerial exception case. Specifically, in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012), the Supreme Court identified the following circumstances to determine whether the “ministerial exception” applies: whether the individual holds the title of “minister;” whether the position requires a significant degree of religious training followed by a formal process of commissioning; whether the employee holds himself or herself out to be a minister; and whether the employee’s job duties reflect a role in conveying the religious organization’s message and carrying out its mission. Although the Supreme Court reiterated that these circumstances should be considered, it clarified that no single circumstance was essential. What matters, according to the Court, is what an employee actually does. In the context of a religious school, “educating young people in their

faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the of the mission of a private religious school.”

The Supreme Court noted that the Ninth Circuit was incorrect in placing unnecessary significance in that both teachers did not have clerical titles. Specifically, the Supreme Court stated the title of “minister” is not necessary, and the fact that Ms. Biel and Ms. Morrissey-Berru were the students’ primary teacher of religion is sufficient. The Supreme Court also stated the Ninth Circuit placed too much weight on the fact Ms. Biel and Ms. Morrissey-Berru have less formal religious schooling than the plaintiff in *Hosanna-Tabor*, and that the significance of formal training must be evaluated in light of the age of students taught and the judgment of religious institution regarding the need for formal training. Finally, the Supreme Court rejected the employees’ argument that the “ministerial exception” under *Hosanna-Tabor* requires an employee to be a “practicing” member of that religion.

Accordingly, the Supreme Court reversed the Ninth Circuit and remanded the matter to the lower court.

Takeaway

This decision provides religious institutions and organizations with more authority to make employment decisions immune from government interference and lawsuits. Although the Supreme Court broadly applied the “ministerial exception” in this case to include teachers at religious schools, religious employers should be cognizant that there is no list of positions that fall under the “ministerial exception;” rather, employers will need to conduct an analysis taking into account what the specific employee “does” instead of whether the employee has a specific title or formal religious education and/or training. Additionally, although this decision involved lawsuits under federal anti-discrimination laws, state and local discrimination laws will, consistent with the First Amendment, be required to recognize the ministerial exception as interpreted by the Supreme Court.

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