BREAKING: U.S. Supreme Court Supports Fairly Broad "Ministerial Exception" to Anti-Discrimination Laws

By Daniel Schwartz on January 11th, 2012

In a unanimous decision, the U.S. Supreme Court today gave some teeth to the "ministerial exception" that, in essence, precludes some employees of religious institutions from suing them under federal discrimination laws.

I've discussed the exception in various posts over the years here and here. Its been supported in the Second Circuit and by the Connecticut Supreme Court, but until now, the U.S. Supreme Court hasn't spoken directly on the issue. The SCOTUS blog has already posted its recap of the entire case here.

SCOTUS: Broad ministerial exception applies

My quick reaction to the decision in Hosanna-Tabor v. EEOC (download here), is that the notion of a "ministerial exception" being recognized by the Supreme Court isn't that much of a surprise. To find otherwise, as the Court stated in its opinion, would be untenable and go against all of the Courts of Appeals. "We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers."

Indeed, the court concludes:

"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."

What is more notable is that there appears to be a broad definition of who is a "minister". (And, to state the obvious, rabbis and the like are obviously included). The court took pains to point out that it hasn't adopted "a rigid formula for deciding when an employee qualifies as a minister." But it concluded that "given all the circumstances of her employment", it applies here.

What did it look at? Well, it considered: the formal title given by the Church, the substance reflected in that title, the employee's own use of that title, and the important religious functions the employee performed for the Church.

The fact that non-religious functions took up the vast majority of the employee's day-to-day responsibilities was not important, said the court. "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."

The court also noted in a footnote that the ministerial exception is an affirmative defense to a lawsuit, not a jurisdictional bar. It also added that it expressed no opinion on whether this exception would bar "other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers."

For religious employers, that last clause means you should probably expect to see lawsuits by employees brought under these state claims, rather than the employment discrimination claims in the past. And don't expect an entire free pass from the courts; religious institutions will still need to establish that the exception applies. But it can breathe a bit more easily that its decisions won't be second-guessed, in many cases, by the courts.