Unpacking the Ministerial Exception—Who Gets to Claim It and Why

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I. Introduction

One of the most powerful tools for religious organization defense is the ministerial exception. This exception prevents a minister from bringing an employment discrimination claim against his church (or religious organization). In 2012, the United States Supreme Court decided *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*,[1] and unanimously held that the exception exists, and that it is grounded in both religion clauses of the First Amendment.

Five years out from this key decision, lower courts continue to grapple with how to apply the Court's opinion to individual circumstances. This white paper explores how *Hosanna-Tabor* has affected employment discrimination litigation against religious organizations, and provides insight for how organizations can better prepare a defense against such actions. First, it provides an overview of the *Hosanna-Tabor* opinion itself, commenting on the Court's important holdings and the limitations of the doctrine. Next, it presents a selection of case studies from courts around the country that have examined the ministerial exception in the post-*Hosanna-Tabor* landscape. It then analyzes these cases, drawing several practical principles for future use. Finally, the paper provides recommendations for strengthening the defense in future litigation and cautions on the limitations of the exception.

II. Overview of the Exception: A Detailed Review of the *Hosanna-Tabor* Decision

Hosanna-Tabor was a groundbreaking case—yet also a recognition of what had been clear in the circuit courts for decades, and was supported by even more years of religious law jurisprudence.

A. Factual Background[2]

The case focused on a lawsuit by Cheryl Perich, a teacher who worked for Hosanna-Tabor Evangelical Lutheran Church and School (a member congregation of the Lutheran Church-Missouri Synod).

The School had two levels of teachers, "lay" and "called." While these teachers had similar duties, called teachers were required to complete certain academic requirements—including courses in theology—and were given a formal title of "Minister of Religion, Commissioned." Perich started out as a lay teacher, but the School asked her to become a called teacher. Perich completed the

[1] *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).
[2] *Id.* at 177-81.

theological requirements and was ultimately given a "diploma of vocation" designating her a commissioned minister. At the time of her conflict with the School, Perich was a called teacher.

During her time at the School, Perich taught kindergarten and later fourth grade. She taught secular subjects like math and art, but also had uniquely religious duties. For example, she taught a religion class four days a week, led the students in prayer and devotional exercises, and attended a weekly chapel service with the students, even leading that service a couple times each year.

Perich then became ill with narcolepsy, which led to her beginning the 2004-2005 school year on disability leave. The School contracted with a lay teacher to fill her position while she was out on leave. Halfway through the school year, Perich informed the School that she would be able to return to work soon. But at the end of January of that year, the congregation of the Church voted to offer Perich a peaceful release from her call and to pay for a portion of Perich's health insurance premiums in exchange for her resignation. Perich declined the offer and showed up at school ready to work in February. She refused to leave until she received written documentation that she had reported to work. She was later informed that she would likely be fired. Perich informed the School that she had contacted an attorney and intended to assert her rights.

Shortly thereafter, the congregation voted to rescind Perich's call. She was then given a letter of termination by the School.

Perich filed a charge with the federal Equal Employment Opportunity Commission (EEOC), which eventually brought a lawsuit against the School and Church on her behalf. The lawsuit claimed that Perich had been fired in retaliation for asserting her rights under the Americans with Disabilities Act (ADA), and sought Perich's position back at the School as well as monetary damages. Hosanna-Tabor fought back, asserting that the ministerial exception barred the lawsuit. While Hosanna-Tabor was successful in the trial court, the appellate court reversed. The U.S. Court of Appeals for the Sixth Circuit concluded that Perich was not a "minister" and thus, Hosanna-Tabor could not invoke the exception.

Finally, the case made its way to the U.S. Supreme Court. Ultimately, the U.S. Supreme Court reversed the Sixth Circuit and held that Perich's suit was barred by the ministerial exception. In doing so, it recognized for the first time that the ministerial exception, a doctrine that had been widely circulating in the lower courts for decades, was grounded in U.S. Constitutional law.

B. The Court's Rationale

The ministerial exception recognizes the long-understood and highly regarded principle that the government will not interfere in the internal affairs of religious bodies. "The promise of the First

Amendment that excludes the government from the oversight of internal working relationships with ministers . . . is no 'exception'; it is at the core of religious freedom that is our common heritage as citizens."[3] Chief Justice Roberts, in his opinion for a unanimous court, began by making clear that both Religion Clauses—the Free Exercise Clause and the Establishment Clause—gave rise to the ministerial exception. The Court first explored the historical underpinnings of keeping government out of the decisions of religious internal affairs.

"Controversy between church and state over religious offices is hardly new."[4] The Court outlined how, from Magna Carta on, our forefathers grappled with how much, if any, involvement government should have with how a church chooses those who will govern the faithful. The Court spent quite a bit of time explaining the history of this tension in order to emphasize that the First Amendment was adopted against this backdrop. "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."[5]

Nevertheless, it was some time before the question came before the courts. The Court explained that, beginning with the seminal case of *Watson v. Jones*, its precedent has made clear that it is not the government's prerogative to be involved in the internal affairs of the church.

Applying employment discrimination law to a church's decision to dismiss one of its ministers implicates these principles. The Court explained as follows:

> 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 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.[6]

The Court then rejected the arguments from Perich and the EEOC. First, it explained that the Court's 1990 decision in *Employment Division v. Smith* does not preclude recognition of the ministerial exception. *Smith* is often cited as the case that pulled the teeth of the Free Exercise Clause. It led to the passing of the Religious Freedom Restoration Act (RFRA) that provides the legal basis today for challenges that had traditionally been brought under the Free Exercise Clause.[7] *Smith* holds that where a neutral law of general applicability burdens religious free exercise, the government need only provide a

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[3] Mark E. Chopko & Marissa Parker, *Still A Threshold Question: Refining the Ministerial Exception Post-Hosanna-Tabor*, 10 First Amend. L. Rev. 233, 234 (2012).
[4] *Hosanna-Tabor*, 565 U.S. at 182.
[5] *Id.* at 184.
[6] *Id.* at 188-89.
[7] *See* 42 U.S.C. § 20000bb, *et seq*.

rational basis for the law in order to survive constitutional challenge.[8] The practical result of this holding is that laws are almost never overturned as violating the Free Exercise Clause.

In this context, the EEOC argued that federal employment discrimination laws are valid and neutral laws of general applicability and that no exception to their application, even to churches, was warranted. The Supreme Court disagreed, noting that *Smith* dealt with outward acts, while the ministerial exception deals with a different issue entirely—the internal governance of a church. *Smith* did not alter the long-standing precedent that church autonomy must be addressed differently than individual practice and exercise of religion.

C. *Hosanna-Tabor*'s Reach and Limits

In *Hosanna-Tabor*, the United States Supreme Court held that the ministerial exception bars an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her.[9] In doing so, the Court explained some nuances of this doctrine, and also limited its holding to this general principle.

i. The exception applies as a defense to federal, state, and local employment discrimination claims

The exception is a defense to claims under both state and federal law. In *Hosanna-Tabor*, Perich had brought claims under the ADA, and Michigan's state law for anti-discrimination in employment. Perich did not dispute that if the ministerial exception applied, it would bar both these claims.[10] Though the Court referred to this fact in a footnote and did not directly address the exception's reach, the wide application of the exception is clear. The ministerial exception flows from Constitutional law. State and federal laws are subordinate to Constitutional law, and thus, cannot trump the exception when it applies.

This wide application is significant for several reasons. First, as this case illustrates, religious defenses are not always available in statutes. The ADA, the statute under which Perich and the EEOC brought her claims, recognizes the right of religious organizations to "discriminate" based on religion through several explicit provisions. But these same exceptions do not apply to the provision in the ADA addressing retaliation, which was the crux of Perich's case. Because the statute would have otherwise applied, an exception was necessary to prevent the lawsuit from proceeding.

In addition, state and local laws may be broader and further reaching than their federal counterparts. For example, certain federal laws may not reach smaller churches because of the requirement that the organization have 15 employees. But state and local laws may apply, and religious organizations may not be exempt. State and local laws also often cover a broader class of persons who are protected, so these

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[8] 494 U.S. 872 (1990).
[9] *See Hosanna-Tabor*, 565 U.S. at 196.
[10] *Id.* at 194 n.3.

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laws are potentially more applicable to a given factual scenario. But because the ministerial exception is a matter of Constitutional law, it preempts all these laws.

ii. The exception applies to more than just the traditional church/pastor relationship

The ministerial exception is not limited to those who have the title of "minister." The exception was clearly applicable to a teacher at a religious school who was not in the traditional lead pastor role at a church. The idea that the ministerial exception applies to a wider range of individuals and more than just traditional churches was affirmed in *Hosanna-Tabor*.

That a person need not be called "minister" in order for the ministerial exception to come into play was a main argument of the Alito concurrence.[11]

iii. Applicability of the ministerial exception does not turn on the reason for the termination

Prior to *Hosanna-Tabor*, it was ambiguous whether the ministerial exception could be relied upon when the legitimacy of the termination could be examined without regard to religious doctrine. At the very least, litigants would argue this when faced with the ministerial exception potentially barring the lawsuit. In other church autonomy and ecclesiastical abstention contexts, courts are free to decide disputes involving churches if the decision will not involve parsing theological doctrine but can be decided on neutral principles of law.[12] Opponents of the ministerial exception doctrine argued that the exception could likewise give way to neutral principles of law, particularly when the employment discrimination matter could be decided without examining religious doctrine—such as when the adverse employment action was obviously taken for a non-religious reason.

But the Court clarified that the purpose of the ministerial exception is to ensure that the decision over who should lead a church is made by the church alone.[13] In other words, the exception is not there to protect only religious doctrinal reasons for termination. It is there to protect the sovereignty of churches in their own self-government. Self-government is implicated regardless of the reason for the termination.

iv. The exception can apply even if only monetary damages are sought

The Court also rejected the argument that, as long as a former minister is not seeking reinstatement as an employee of the church, applying nondiscrimination laws would not unduly burden religious free exercise or implicate Establishment Clause concerns. In other words, the type of relief sought does not

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[11] *See id.* at 198 (Alito, J., concurring).
[12] *See, e.g.*, *Jones v. Wolf*, 443 U.S. 595 (1979).
[13] *See Hosanna-Tabor*, 565 U.S. at 194-95.

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affect whether the exception applies.[14] The exception applies regardless of whether the former minister wants reinstatement, or monetary damages in lieu of reinstatement. A court ordering a church to accept a minister it did not want would plainly raise grave First Amendment concerns. But so too would paying money damages. The Court explained as follows: "An award of such relief would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination."[15] In order to award such relief, a court would have to determine that the termination of the minister was wrongful—which the ministerial exception forecloses.

v. There is no single test for determining who qualifies for the exception (but there is ultimately a right answer)

The Supreme Court did not give a bright-line test or rigid formula for deciding who is a minister for the purposes of the ministerial exception. Instead, the Court considered "all the circumstances of her employment" to determine that the exception covered Perich.[16] In doing so, the Chief Justice's opinion emphasized what considerations, in this particular case, made Perich a minister: 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. Nowhere in the opinion, however, does the Court conclude that only these factors should be considered in a given scenario, or that there is any sort of balancing test wherein one factor outweighs the others. Although some lower courts have distilled *Hosanna-Tabor* into a "four-factor" test, the Court did not actually adopt a list of factors.

Indeed, the concurring opinions reinforce that the Justices were not imposing a multi-factor test with just those four factors. Justice Thomas, for example, wrote separately to emphasize his belief that the only inquiry that mattered was a religious organization's good-faith understanding of who qualifies as its minister.[17] Justice Alito's concurrence (joined by Justice Kagan) shunned emphasis on a formal title or ordination, and instead, noted that courts should focus on the functions performed by persons who work for religious organizations.[18] In Justice Alito's opinion, the exception 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."[19] An important religious position is key. "These include those who serve in positions of leadership, those who perform important functions in worship services and in the performance of religious ceremonies and rituals, and those who are entrusted with teaching and conveying the tenets of the faith to the next generation."[20]

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[14] *See id.* at 194.
[15] *Id.*
[16] *Id.* at 190.
[17] *See id.* at 196 (Thomas, J., concurring).
[18] *See id.* at 198 (Alito, J., concurring).
[19] *Id.* at 199 (Alito, J., concurring).
[20] *Id.* at 200 (Alito, J., concurring).

Despite the Court's insistence that there is no one right way to determine if someone is a minister, there is a right answer to the question in each situation. In this case, the federal appeals court had determined that Perich was not a minister, primarily because the majority of her time was spent performing secular duties.[21] The Court explained that this was too narrow a focus and that the inquiry should have more fully considered the circumstances of her role within the School.[22]

vi. The ministerial exception is an affirmative defense, not a question of subject matter jurisdiction

Hosanna-Tabor also settled a circuit split about how to treat the ministerial exception as a technical matter. Prior to this case, the federal circuit courts of appeals were divided on the question of whether the ministerial exception implicated subject matter jurisdiction. This is important because if there is no jurisdiction, courts cannot hear a case. The U.S. Courts of Appeals for the Sixth and Seventh Circuits treated the exception as a jurisdictional bar, while the First, Third, Ninth, and Tenth Circuits treated it as an affirmative defense.[23] In a footnote, the Court explained that courts treating the exception as a jurisdictional bar were incorrect; the ministerial exception is an affirmative defense, not a jurisdictional bar.[24] Because federal courts have the power to hear employment discrimination cases, the issue is not jurisdictional. Rather, because the existence of the exception bars the claim, the court must decide whether the exception applies and is therefore a defense.

vii. The Supreme Court has sanctioned the exception only in the context of employment discrimination cases

The Supreme Court specifically limited its holding to employment discrimination suits. The Court avoided getting into whether the exception applies to other types of wrongful termination lawsuits, such as one based on breach of contract, or whether the principles of the case might translate to other contexts, like tort suits against religious organizations. Lower federal and state courts have applied the ministerial exception to a much broader range of cases.[25] The Supreme Court's opinion does not say anything about whether those cases are correct. Instead, it specifically declined to express an opinion on whether the reasoning in this case would extend to another factual scenario. But in declining to express an opinion on the reach of the ministerial exception beyond employment discrimination claims, the Court also left intact those lower court decisions that had expanded the doctrine to other actions. So, the viability of the defense in other contexts will continue to be the subject of litigation and debate.

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[21] *Id.* at 193.
[22] *Id.* at 193-94.
[23] *Id.* at 195 n.4 (explaining circuit split).
[24] *Id.*
[25] *See, e.g.*, *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 311 (4th Cir. 2004) (applying the ministerial exception to bar claims under the Fair Labor Standards Act); *also Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357 (Wash. 2012) (ministerial exception barred negligent supervision/retention lawsuit involving pastor).

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III. Post-*Hosanna-Tabor* Reflections

In the years since *Hosanna-Tabor* was announced, lower courts have grappled with how to translate the Supreme Court's language into practical application in an individual case. Due to the fact-specific nature of these cases, outcomes turn on the individual situations presented. However, one can draw several principles from the latest cases dealing with the ministerial exception post-*Hosanna-Tabor*. This section provides case studies of some of the more recent ministerial exception cases. It then analyzes these cases and extracts principles of which religious organizations should be aware.

A. Case Studies

Penn v. New York Methodist Hospital[26]

Background: A hospital chaplain brought suit against his hospital after it passed him over for a promotion. The chaplain claimed race and religious discrimination, among other things. The hospital was arguably primarily a secular institution, but maintained its historic relationship with the Methodist Church and operated the hospital with religious values.

Procedural Posture: The case was before the Court on the Hospital's motion for summary judgment.

Holding: The ministerial exception applied and summary judgment was granted in favor of the Hospital.

What Convinced the Court: As a Methodist, ordained minister, there was no doubt that the chaplain was a ministerial employee. The only question, therefore, was whether the Hospital was a sufficiently religious organization capable of invoking the exception. While the Hospital had since formally severed ties with the Methodist Church, the Court concluded that formal affiliation with a church was not necessary for the Hospital to be considered a religious employer for this employment relationship. It was undisputed that the Hospital continued to operate with religious values, and still maintained some relationship with the Methodist Church (for example, the Hospital's Board was required to have significant representation from the Methodist Church). Ultimately, the Court concluded that although the Hospital "may be primarily a secular institution, with regards to its employment of the Plaintiff, the Hospital was acting as a religious organization."[27] The Court limited its holding by noting that the chaplain in this case was Methodist (like the Hospital affiliation), and that the Court would not venture to decide whether the same result would have been reached had the case involved a chaplain of a different faith.

[26] *Penn v. N.Y. Methodist Hosp.*, 158 F. Supp. 3d 177 (S.D.N.Y. 2016).
[27] *Id.* at 183.

Collette v. Archdiocese of Chicago[28]

Background: The former employee worked for a Catholic parish in Chicago as the Church's Music Director, a position he had held for the last 17 years. When the Church learned that he intended to marry his same-sex partner, it asked for his resignation. When the Music Director refused to resign, the Church fired him. The Church claimed he had been terminated due to his participation in a non-sacramental marriage, not necessarily because he was gay. The former Music Director sued, claiming discrimination on the basis of sex, sexual orientation, and marital status.

Procedural Posture: The Church filed a motion to dismiss the lawsuit, claiming the ministerial exception was a complete defense.

Holding: The question of whether the former Music Director was the Church's minister was still an open fact question, so the Church's motion to dismiss was denied.

What Convinced the Court: In this case, the Court did not analyze whether or not the position was ministerial, because of the early stage of the case. The Court noted that the former Music Director had specifically filed his complaint alleging that he was not a minister, and claimed his role was not liturgical. While the Church tried to convince the Court to rule in its favor by relying on the former employee's title alone, the Court decided that the parties should engage in some limited discovery to explore the question and develop a factual record so the issue could really be decided. In the end, the Court limited the case going forward to address only whether the ministerial exception applied.

Curl v. Beltsville Adventist School[29]

Background: This case involved a music teacher who was fired from her position at a Seventh-day Adventist school after she sustained injuries at work and was unable to return. The School had given her an ultimatum of returning to work by a certain date. Her doctor cleared her, but with restrictions. The School ultimately decided, however, that it couldn't accommodate the restrictions and rescinded her contract for the school year. The former teacher brought a whole host of claims (12, to be exact), alleging both federal and state employment law claims. The facts were compelling—the teacher was dismissed after filing for workers' compensation, had a disability for which she requested an accommodation that the School refused to provide, and was ultimately replaced by a teacher over 25 years her junior.

[28] *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d 730 (N.D. Ill. 2016).
[29] *Curl v. Beltsville Adventist Sch.*, No. GJH-15-3133 (D. Md. Aug. 16, 2016).

Procedural Posture: In this case, the School brought a motion to dismiss, or in the alternative, a motion for summary judgment. Because it did this, it was able to submit its own version of the facts and the Court decided to accept its invitation to convert the motion to dismiss to a motion for summary judgment.

Holding: The music teacher's federal claims were barred by the ministerial exception because she was the School's minister.

What Convinced the Court: Despite the fact that the former teacher denied that she held herself out as a minister, claimed she didn't teach Bible study, and insisted she was not required to have any ministerial training for her position, the following facts persuaded the Court that she was a minister:

- She was a Seventh-day Adventist whose role at the School included teaching religious music and leading prayer services;
- The teacher had at one time admitted that one of her goals was for her students to see Jesus through music;
- A portion of her salary was paid by tithe funds, which were intended to be used for ministry;
- The School clearly held her out as a minister by requiring that she lead prayer services and that she incorporate into her teaching the Adventist educational philosophy.

Drumgoole v. Paramus Catholic High School[30]

Background: A guidance counselor of a Catholic high school in New Jersey was fired after she married her same-sex partner. The School had its own equal employment policy that stated it would not discriminate on the basis of marital status. After she was let go, instead of following the School's ecclesiastical appellate procedure, the former counselor filed suit under New Jersey's state anti-discrimination act. New Jersey's law makes it illegal to discriminate in employment on both marital status and sexual orientation.

Procedural Posture: The School immediately moved for summary judgment, raising among others, the ministerial exception defense. It argued that further discovery was not necessary to resolve the case.

Holding: The School's motion for summary judgment was denied. Further discovery over whether the counselor's position was ministerial was required.

What Convinced the Court: At this point in the litigation, all the School had presented was its word that the counselor was a minister. This was contrary to the counselor's position. Given this material

[30] *Drumgoole v. Paramus Catholic High Sch.*, No. BER-L-3394-16 (N.J. Super. Ct. Law Div. Aug. 22, 2016).

factual dispute, the Court determined it would be inappropriate to grant judgment in favor of the School without an opportunity to develop a factual record over the ministerial nature of the position.

Yin v. Columbia International University[31]

Background: A former professor at a religious college brought an employment discrimination suit. The University had ended her employment after informing her that the program she directed was being eliminated. The professor claimed, however, that she was subjected to discrimination based on her race, sex, and national origin, and that she was retaliated against—all in violation of Title VII. She also alleged pay discrimination under the Equal Pay Act.

Procedural Posture: The University moved to dismiss the professor's complaint under Rule 12(b)(6), arguing that the professor was a ministerial employee and that her suit should be dismissed.

Holding: The University's motion to dismiss based on the ministerial exception was denied.

What Convinced the Court: The Court observed "that an affirmative defense 'may be raised under Rule 12(b)(6), but only if it clearly appears on the face of the complaint.'"[32] Because the professor's complaint did not clearly establish that she was a ministerial employee, the University's motion was denied.

Ciurleo v. St. Regis Parish [33]

Background: The case involved a religious school that had decided not to renew a teacher's contract. The teacher sued, claiming age discrimination. In defense, the School asserted that the teacher was barred from bringing her suit because of the ministerial exception. The teacher, as so often is the case in these cases, denied she was a minister. She described her religious duties as minimal, limited to leading students in the morning prayer, leading 20-30 minutes of religious studies per day, and escorting students to weekly school mass.

Procedural Posture: The School moved for summary judgment, arguing that the ministerial exception applied as a defense to the teacher's suit.

Holding: Despite the fact that three out of the four *Hosanna-Tabor* "factors" were absent in this case, the Court found the teacher to be the School's minister and granted its motion for summary judgment.

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[31] *Yin v. Columbia Int'l Univ.*, No. 3:15-cv-03656-JMC (D. S.C. Sept. 26, 2016).
[32] *Id.* (quoting *Richmond, Fredericksburg & Potomac R.R. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993)).
[33] *Ciurleo v. St. Regis Parish,* 214 F. Supp. 3d 647 (E.D. Mich. 2016).

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What Convinced the Court: Because of the teacher's role in teaching religious doctrine and leading prayer—two core religious activities—the teacher was a key person through which the religious community transmitted its message to the next generation. In so finding, the Court noted as follows:

> [R]eligious function alone can trigger the [ministerial] exception in appropriate circumstances. This conclusion flows from a core value of the Free Exercise Clause, which is to "protect a religious group's right to shape its own faith and mission through its appointments." Unless courts recognize the centrality of this factor to trigger the application of the ministerial exception, no church, synagogue, mosque, or other religious community would be truly "free to choose those who will guide it on its way."[34]

Ginalski v. Diocese of Gary[35]

Background: A former Principal at a Catholic High School claimed discrimination on the basis of sex, age, and disability. The School had not renewed her contract after the Diocese adopted a principal-president model of governance at the School and hired a man for that position.

Procedural Posture: The School filed a motion for summary judgment, raising the ministerial exception, after the parties had conducted discovery in the case.

Holding: The Principal's claims were barred by the ministerial exception.

What Convinced the Court: Because the case was before the Court on a motion for summary judgment after discovery, the Court had a lot of evidence to consider. The Court evaluated the undisputed evidence against the "four factors" listed in *Hosanna-Tabor*, and outlined whether each factor weighed in favor of, or against, finding the ministerial exception applied. Ultimately, the Court concluded that, while some of the factors weighed against application of the ministerial exception (for example, the Principal was not required to have any formal religious training, nor did she perform strictly religious functions), the former Principal's role as the leader of a Catholic high school was sufficient for the Court to apply the ministerial exception.

Richardson v. Northwest Christian University[36]

Background: An unmarried Professor of Exercise Science at a Christian university was fired after disclosing her pregnancy to her supervisors. The University had a policy of hiring only Christian faculty

[34] *Id.* (internal citations omitted).

[35] *Ginalski v. Diocese of Gary*, No. 2:15-CV-95-PRC (N.D. Ind. Dec. 5, 2016).

[36] *Richardson v. Nw. Christian Univ.*, No. 6:15-cv-01886-AA (D. Or. Mar. 16, 2017).

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and expressly required them to integrate their Christian faith into practice. It did not, however, have a specific policy regarding extramarital sexual conduct.

Prior to her termination she was given the option of keeping her job if she would either stop cohabitating with the baby's father, or marry him. When she chose neither option, she was fired. The teacher filed suit against the University, claiming, among other things, discrimination on the basis of marital status.

Procedural Posture: The case was before the Court on cross-motions for summary judgment after full discovery had taken place. The Court noted that the case was unusual in that the facts were largely undisputed. Accordingly, the Court was looking at the case from a legal perspective.

Holding: The ministerial exception does not apply.

What Convinced the Court: The Court extensively reviewed the *Hosanna-Tabor* opinion, in addition to cases applying it. The Court concluded that it must apply the factors in the specific facts of this case, noting as follows:

- The teacher's title, "Assistant Professor of Exercise Science" was secular and did not connote any religious significance;
- The teacher did not undergo any specific religious instruction or training in order to obtain her position;
- Though the teacher held herself out as a Christian, she did not hold herself out as a minister;
- Any religious functions or duties the teacher had were wholly secondary to her secular ones.

Essentially, because the Court did not want to extend the ministerial exception to every teacher at a Christian university, the Court had to draw the line.

Sterlinski v. Catholic Bishop of Chicago[37]

Background: The case involved a Director of Music for a Catholic Church who was responsible for, among other things, choosing all the music at liturgical celebrations and masses. Though he claimed he performed these duties to his employer's satisfaction, he was demoted from full-time to part-time, and was eventually fired. Though the Church claimed the demotion was for financial reasons, the former music director sued, claiming age and national origin discrimination, as well as retaliation.

Procedural Posture: The Bishop had previously moved to dismiss the case under Rule 12(b)(6), noting that the former music director was clearly a ministerial employee. The Court had granted the motion without prejudice, allowing the employee to file an amended complaint.[38] The former music director

[37] *Sterlinski v. Catholic Bishop of Chicago*, No. 16 C 00596 (N.D. Ill. May 1, 2017).
[38] *See Sterlinski v. Catholic Bishop of Chicago*, 203 F. Supp. 3d 908 (N.D. Ill. 2016).

filed a second complaint, this time arguing that because he was demoted, his duties changed to non-ministerial ones such that the exception could not be invoked. The Bishop again moved to dismiss under Rule 12(b)(6).

Holding: The Bishop's motion was granted in part, and denied in part.

What Convinced the Court: In this case, the evidence was clear that when he was full-time, the music director had responsibility for choosing the music that would be played at mass, and thus, he was an integral part of the Church and the message it conveyed. The Court contrasted a case that (as detailed above) had come out just a month before involving a music director, noting that in that case, the music director alleged that he did not have responsibility for choosing music for masses or other religious celebrations. Here, because the selection of music for religious services was held to be an essential religious function, it was enough to establish the music director as a ministerial employee. So, the Court granted the motion in part as to any claims related to the demotion. The Court also concluded, however, that further discovery was warranted to determine whether the former director's duties at the time of his termination were such that he was still a ministerial employee. The Court denied the portion of the motion related to the wrongful termination claims and ordered limited discovery on whether the former music director was a minister at the time he was fired.

Fratello v. Roman Catholic Archdiocese of New York[39]

Background: A former Principal of a Catholic school in New York was fired. She brought an employment discrimination claim against the Archdiocese asserting gender discrimination and retaliation under state and federal law, as well as some contract claims.

Procedural Posture: The case was before the Court on the Church's motion for summary judgment. The Church had previously filed a motion to dismiss the case, which the Court had denied because of the fact-specific nature of the ministerial exception. The Court had directed limited discovery on the ministerial exception issue.

Holding: The ministerial exception applied and summary judgment was granted in favor of the Church.

What Convinced the Court: The Principal's role in the Archdiocese's school system was extremely well-documented. In fact, before getting too far into the opinion, the Court spent a noticeable portion of it recounting all the ways the Principal's spiritual role was outlined in the Archdiocese's manuals and employee handbooks. Despite the fact that the Principal's title was "Lay Principal," and that she did not accept a formal call or take a tax exemption, the Court emphasized that the following factors were important:

[39] *Fratello v. Roman Catholic Archdiocese of N.Y.*, 175 F. Supp. 3d 152 (S.D.N.Y. 2016).

- She was held out as a minister by virtue of the requirement that she be a practicing Catholic (unlike other school staff);
- While she didn't accept a formal call or take the clergy tax allowances, she held herself out to the school community as a religious authority in many ways (leading prayers, conveying religious messages in speeches and writings, etc.);
- She was the head of a clearly religious organization and there was no doubt her position included conveying the Church's message and carrying out its mission.

Affirmed on Appeal: This case ultimately found its way to the U.S. Court of Appeals for the Second Circuit and was affirmed on appeal. The appellate court noted that *Fratello* was its first occasion to address the ministerial exception since *Hosanna-Tabor*. The Court noted as follows: "In light of that decision, we conclude that in determining whether the ministerial exception bars an employment-discrimination claim against a religious organization, the only question is whether the employee qualifies as a 'minister' within the meaning of the exception."[40] As to how to answer that question in a given case, the appellate court recognized that *Hosanna-Tabor* instructed only what considerations a reviewing court might take into consideration, but application of those "factors" were not required in every case. It nevertheless found the four considerations in *Hosanna-Tabor* instructive in this case. And, for substantially the same reasons as the district court, when reviewing those considerations, concluded the Principal was a minister.

B. Case Study Analysis: Five Key Principles

The most recent ministerial exception cases demonstrate some interesting trends. First, those who are making appearances in these lawsuits are rarely traditional churches, demonstrating that many different religious organizations are targets of employment discrimination challenges. Another trend is that religious organizations are being forced to incur more expensive and time-consuming litigation to defend themselves in this area, with the case-ending decisions being delayed further into the litigation process. Still, asserting the ministerial exception as early and as clearly as possible turns out to be a successful strategy in many cases. When courts actually get to the merits of applying the exception, the question of "who is a minister" is the foremost dispute in these cases. Finally, while *Hosanna-Tabor* is clear that the reason for the termination has no bearing on whether a church should win or lose under these cases, in the cases where religious organizations have been unsuccessful, it is interesting to note anecdotally the reasons behind the termination.

i. Defendants are rarely traditional churches

In these cases, religious defendants invoking the ministerial exception in litigation are rarely traditional churches. Out of the 10 cases reviewed, seven were brought by former employees of religiously-affiliated

[40] *Fratello v. Archdiocese of N.Y.*, 863 F.3d 190 (2d Cir. 2017).

schools; two were brought by former church employees; and one by a chaplain at a religiously-affiliated hospital. The fact that the organization is not a traditional church does not bar the application of the ministerial exception. Many of the religiously-affiliated schools were Catholic schools run by the Diocese, and thus, very close to the situation in *Hosanna-Tabor*, where the school was run by the Church.

Hosanna-Tabor clearly applies to more than just traditional churches. But whether the ministerial exception is available to an organization will depend on if the organization is a religious institution that can take advantages of the protections afforded to such organizations by the First Amendment. In most cases, courts are wary to doubt an organization's claim that it is sufficiently religious such that the government should not be involved in its internal affairs.

In at least one case, the ministerial exception was asserted by an organization that was arguably secular. There, the court explained that the ministerial exception operates on a sliding scale—the more religious the organization, the more likely employees will be ministerial.[41] In turn, the more ministerial the position, the less important it is that the entire organization look exactly like a church. In that case, the hospital had cut ties with its founding church, but it still operated the organization according to religious values. More importantly, the position was clearly ministerial: a chaplain is an undisputed example of a ministerial employee.

ii. Religious organizations are not getting out as early in the litigation as they had in the past

Before *Hosanna-Tabor*, it was common for a church faced with an employment discrimination lawsuit by a former minister to be able to quickly get out of the litigation by filing a motion to dismiss raising the exception. This was especially true in those jurisdictions where the ministerial exception was a complete bar to a lawsuit.

Prior to *Hosanna-Tabor*, many courts treated the exception as jurisdictional. If the exception applied, the court would dismiss the case for lack of jurisdiction. There were several advantages to this approach for religious organizations.

First, the issue could be raised immediately in a lawsuit, and when the case was in federal court, a 12(b)(1) motion could be filed. Federal Rule of Civil Procedure 12(b)(1) provides that a defense claiming lack of subject-matter jurisdiction may be asserted by a motion to dismiss, rather than by filing an answer to a complaint. In addition to saving the trouble of answering the complaint, these motions had another advantage. They could attack the factual basis of the complaint, allowing the submission of exhibits and other facts outside the complaint for the court's consideration, without converting the motion to one for summary judgment. So, religious organizations could deal with the factual question of "who is a minister" with documentation readily available.

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[41] *Penn v. N.Y. Methodist Hosp.*, 158 F. Supp. 3d 177, 182 (S.D.N.Y. 2016).

Another advantage of arguing a jurisdictional issue is that courts are more reluctant to allow full discovery prior to figuring out the underlying issue. Discovery may be stayed while the legal issue is determined, making litigation less expensive.

As is clear from the recent cases, the fact that the ministerial exception is now being treated as an affirmative defense changes the course of the lawsuit. Rather than being able to assert a jurisdictional defense, the religious organization is left attempting to assert the affirmative defense in a motion to dismiss for failure to state a claim. In this situation, the court will look only at whether the affirmative defense is proven based on the face of the complaint—in other words, is the defense obviously true based on the facts stated in the complaint. As demonstrated by the cases examined, this is a difficult standard for the religious organizations to meet.

As a result, instead of the court being unable to hear the case at all, religious organizations must prove that the ministerial exception applies in order to win. Oftentimes, this involves a fact-specific inquiry that means the case cannot be dismissed at an early stage in the litigation. Said differently, because the ministerial exception is an affirmative defense, it is no longer simply a "get-out-of-litigation-free card." The cases outlined demonstrated this shift: of the cases surveyed, no religious organization was ultimately able to finally end the case on a Rule 12(b)(6) motion to dismiss for failure to state a claim, though several tried.

Despite this shift, there are steps a religious employer can take to make it more likely a court will entertain a motion to dismiss if the situation gets to litigation. But this requires advance preparation, as discussed below.

iii. Asserting the defense early still pays off for religious organizations

While courts are reluctant to grant a simple motion to dismiss early in the litigation, there are still benefits of raising the defense at the earliest possible point. If the case seems clear cut, an organization could try to ask the court to consider some evidence early and rule on the motion as a motion for summary judgment, which is a motion that is decided on the law and evidence presented, as long as there is no dispute about a "material fact." Such a dispute would require going to trial.

Outside of the Rule 12(b)(1) context, when a party submits evidence in a motion to dismiss in federal court, it may be converted to a motion for summary judgment. In this context, the court is considering whether there is a dispute of material fact that makes it so the case needs to go to trial. If there is not such a dispute, the court can rule on the legal issue, which may get the religious organization a judgment on the law. Normally, moving for summary judgment prior to conducting discovery is not typical. But when the facts are essentially undisputed, and the Church has the information to demonstrate that an employee is a minister even based on the facts brought by the employee, it has been successful. For example, this approach worked in the *Curl* case out of Maryland federal district court.

Other advantages to asserting the defense early were also demonstrated in the cases examined. For example, even if the court will not rule immediately, raising the issue early flags it for the court. Churches asserting the ministerial exception don't always win, but it is a fairly solid defense when it applies. In several cases reviewed, the court ordered limited discovery on the question of whether the employee was a minister. This meant that the only topic for discovery was the issue of whether the ministerial exception applies to that employee. This would include facts such as the employee's title; day-to-day duties; how he or she held him or herself out to the community; and other such items. It might also include discovery on how others were treated at the organization. It probably would not include discovery about the merits of the underlying discrimination complaint that do not relate to the question of whether the person is a minister, such as the facts leading up to the termination or the real reason for it. After that discovery was complete, the organization could again raise the defense in a motion for summary judgment.

Limited discovery is advantageous because it cuts costs (and somewhat limits the inconvenience of a lawsuit) for the organization. And focusing the litigation on one issue helps it to end more quickly. It is also possible that when this doctrine becomes the focus, the former employee will be more willing to consider settlement.

iv. The issue of "who is a minister" is the main focus of this kind of litigation

Another clear take-away from these cases is that employees suing their religious employers will almost always argue about the ministerial exception. Employees want to argue a narrow ministerial exception; the religious organizations believe it is broad. This is not surprising, given the Supreme Court's emphasis on a fact-specific, holistic examination of whether a person qualifies for the exception.

Courts are recognizing the Supreme Court's mandate not to adopt a "rigid formula" for deciding who is a ministerial employee. Nevertheless, many courts distill the Supreme Court's opinion down into a four-factor test, and focus the inquiry of whether an employee is a ministerial employee by examining the following considerations: (1) "the formal title given to the employee by the organization"; (2) "the substance reflected in that title"; (3) "the employee's own use of that title"; and (4) "the important religious functions the employee performed."[42]

Even though some courts treat *Hosanna-Tabor* like a four-factor test, most follow the Court's admonishment to look at the entire picture. Courts are considering (and giving different weight to) the *Hosanna-Tabor* "factors," as well as others that might be persuasive. Indeed, courts have decided cases that essentially turned on religious function alone.[43] To this end, documentation was key. Though not dispositive, a ministry's opinion about who is its minister carried a lot of weight. And where a church or

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[42] *See, e.g.*, *Ciurleo v. St. Regis Parish*, 214 F. Supp. 3d 647; *see also Ginalski v. Diocese of Gary*, No. 2:15-CV-95-PRC (N.D. Ind. Dec. 7, 2016) (examining case through "*Hosanna-Tabor* factors").

[43] *See, e.g.*, *Ciurleo*, 214 F. Supp. 3d at 647.

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ministry had well-documented policies about an individual's role, and the individual knew about and agreed to that definition, the ministry was more likely to be successful.

v. Termination for violating moral policies may be harder to win

Hosanna-Tabor made clear that the reason for the termination is completely irrelevant to the ultimate inquiry of whether the ministerial exception applies. But it is interesting to see the trends of why religious employees are being dismissed. Of course, the employees all claimed the reason for their termination was discrimination; but here were the reasons put forth by employers:

- Contract not renewed/position eliminated (5);
- Violation of Church's moral policies/teachings (3);
- ADA issues (1);
- Not hired for full-time position (1).

Of the three cases that involved dismissal of employees for violating Church teachings, all three involved employees being dismissed for issues involving marriage and human sexuality. Two were fired for marrying their same-sex partners; one was for having a child out of wedlock and living with the baby's father. This recurring topic is not surprising given the current debate around these issues in the law and broader society. In all three cases, the court sided with the employee.

The ministerial exception is of utmost importance in these cases because courts in some parts of the country are increasingly hostile to the argument that being able to discriminate on the basis of religion means that the organization can impose its moral policies on its employees. For example, in one case, the Court granted summary judgment in favor of a former employee claiming marital discrimination, despite the religious organization's objection that it simply applied its religious moral requirement on cohabitation. The rationale for these decisions is that discrimination on the basis of religion includes only the ability to hire/fire someone on the basis of their religious affiliation (e.g., for not being a "Christian" or a practicing Catholic); but does not include the ability to hire/fire someone for not conforming to religious teachings as those are set out by the organization if those teachings constitute discrimination on the basis of some other protected class like sex. This narrow view of what it means to be an adherent of a particular religion has been the subject of scholarly debate and has real-world impacts in these cases.

IV. Recommendations and Precautions

A. Can Advance Preparation Make a Difference?

As the cases demonstrated, the factual issue over "who is my minister" continues to be the central issue in the cases. Religious organizations should be prepared for this reality and take steps before an employment relationship sours to clarify who is a ministerial employee. Do not assume that the employees the organization considers ministerial would clearly know who they are, or would agree later to what they would agree to now. Verbal understandings are weaker. Make the written designations explicit, or clearly spell out in policies what kind of positions are considered ministerial in the organization. Then, make sure the employees are told in advance that they are ministerial employees, preferably through signing some kind of handbook or agreement, and that they understand that they may be exempt from the protections in some anti-discrimination laws. This advance preparation may make a difference.

Cases that have a shot at getting out on a motion to dismiss—or converting the motion to a summary judgment motion at an early stage and achieving a similar purpose—are those where the fact that the employee is a minister is basically undisputed. Documentation can show the position is ministerial, if it was given to the employee or agreed upon by him or her well in advance. Job descriptions, employee handbooks and policies, and other documents that are clear and consistent, and have created transparency with the employee, are key here. And, this documentation should not simply sit on the shelf, but should be conformed to in practice.

Just as it is important to make clear who is a ministerial employee, it is also important to clarify what discrimination protection an employee enjoys (or not). If ministerial employees will be treated differently from others in the organization, this should be noted in policies. In addition, religious organizations must be careful about using secular nondiscrimination policies. For example, in one case, the employee argued that the employer's nondiscrimination policy—which explicitly prohibited discrimination on the basis of marital status—protected her same-sex marriage (despite the Catholic Church's long-standing policy on marriage).

Organizations wishing to make adherence to religious moral doctrine a condition of employment must be very cautious about adopting ambiguous anti-discrimination policies that may be in conflict with what the organization expects. Religious organization must be explicit about the moral standards expected of employees; it should never come as a surprise to an employee that certain conduct could lead to termination. Employees should be required to agree to abide by the religious standards of a religious group if that is a condition of employment. And organizations should lay out all their religious standards clearly, even if they are a subsidiary of a larger religious organization.

Finally, organizations can have Christian conciliation clauses that require Christian mediation or arbitration based on spiritual beliefs. The courts may agree that employees have waived the ability to file lawsuits, at least in some cases.

B. Beyond Employment Discrimination in the Church: How Far Will the Exception Extend?

Hosanna-Tabor solidified the ministerial exception—but only for employment discrimination claims in a case where the organization was clearly a church's school. The Court carefully reserved ruling on whether the ministerial exception applied to other circumstances. Open questions remain on whether the ministerial exception applies to other types of cases.

While the Supreme Court was careful to avoid suggesting the ministerial exception could extend beyond the employment discrimination context, lower courts have grappled with this issue for years. Many courts have concluded that the ministerial exception applies to other types of claims.

Others have been wary to extend the exception past this threshold. For example, many courts have ruled that the ministerial exception does not bar a claim for breach of contract by a pastor against his church. The rationale behind this is that the parties remain free to burden their First Amendment rights by contract. Essentially, if the church wants to contract with a minister in a certain way, courts can analyze that under neutral principles. But that doesn't always make sense in light of *Hosanna-Tabor's* explanations about why courts should not be in the business of telling a church to retain an unwanted minister.

In contrast, some courts have interpreted *Hosanna-Tabor* to foreclose negligent supervision and negligent retention suits against churches for retaining ministers who commit tortious conduct.[44] These cases extend the rationale of *Hosanna-Tabor* to an outer limit, arguing that negligent retention and supervision cases implicate a church's First Amendment right to select its clergy. More courts go the other way, concluding that there is no First Amendment problem because the tortious conduct underlying a negligent retention or supervision claim is not part of the religious practice of the organization.[45]

V. Conclusion

The ministerial exception reflects the important balance our constitutional system has struck between church and state. But it should be relied upon with caution. It is not an excuse to ignore policies and procedure, or employment discrimination law. If anything should be clear from examining the litigation

[44] *See, e.g.*, *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357 (Wash. 2012).
[45] *See id.* at 375 (Chambers, J., dissenting in part, concurring in part) (colleting cases); *see also Savin v. City & Cnty. of San Francisco*, No. 16-cv-05627-JST (N.D. Cal. Jun. 22, 2017) (ministerial exception did not bar sexual harassment claim based on actions of a pastor); and *Gregorio v. Hoover*, No. 16-782 (EGS) (D.D.C. Feb. 28, 2017) (ministerial exception did not bar breach of contract action).

in this area, it is that the ministerial exception does not prevent lawsuits from being filed. To this end, religious organizations should prepare legally, assessing and minimizing risks before litigation occurs. Mediation and reconciliation should be encouraged and pursued where appropriate. In sum, religious organizations should continue to understand the impact and reach of *Hosanna-Tabor* and the ministerial exception, while taking steps to minimize risk and prepare for potential litigation.

Appendix: Index of Post-*Hosanna-Tabor* Ministerial Exception Cases

Federal Circuit Court Cases

1. *Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017)
2. *Puri v. Khalsa*, 844 F.3d 1152 (9th Cir. 2017)
3. *Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829 (6th Cir. 2015)
4. *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012)

Federal District Court Cases

1. *Grussgott v. Milwaukee Jewish Day School Inc.*, No. 16-CV-1245-JPS (E.D. Wisc. May 30, 2017)
2. *Sterlinski v. Catholic Bishop of Chicago*, No. 16 C 00596 (N.D. Ill. May 1, 2017)
3. *Richardson v. Northwest Christian University*, No. 6:15-cv-01886-AA (D. Or. Mar. 16, 2017)
4. *Ginalski v. Diocese of Gary*, No. 2:15-CV-95-PRC (N.D. Ind. Dec. 5, 2016)
5. *Ciurleo v. St. Regis Parish*, 214 F. Supp. 3d 647 (E.D. Mich. 2016)
6. *Yin v. Columbia International University*, No. 3:15-cv-0365-JMC (D. S.C. Sept. 26, 2016)
7. *Sterlinski v. Catholic Bishop of Chicago*, 203 F. Supp. 3d 908 (N.D. Ill. 2016)
8. *Drumgoole v. Paramus Catholic High Sch.*, No. BER-L-3394-16 (N.J. Super. Ct. Law Div. Aug. 22, 2016).
9. *Curl v. Beltsville Adventist School*, No. GJH-15-3133 (D. Md. Aug. 16, 2016)
10. *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d 730 (N.D. Ill. 2016)
11. *Fratello v. Roman Catholic Archdiocese of New York*, 175 F. Supp. 3d 152 (S.D.N.Y. 2016)
12. *Penn v. New York Methodist Hospital*, 158 F. Supp. 3d 177 (S.D.N.Y. 2016)
13. *Bohnert v. Roman Catholic Archbishop of San Francisco*, 136 F. Supp. 3d 1094 (N.D. Cal. 2015)
14. *Rogers v. The Salvation Army*, No. 14-12656 (E.D. Mich. May 11, 2015)
15. *Preece v. The Covenant Presbyterian Church*, No. 8:13CV188 (D. Neb. Apr. 22, 2015)
16. *Herx v. Diocese of Fort Wayne-South Bend Inc.*, 48 F. Supp. 3d 1168 (N.D. Ind. 2014)
17. *Conlon v. Intervarsity Christian Fellowship/USA*, 13 F. Supp. 3d 782 (W.D. Mich. 2014)
18. *Ginyard v. Church of God in Christ Kentucky First Jurisdiction, Inc.*, 6 F. Supp. 3d 725 (W.D. Ky. 2014)
19. *Hough v. Roman Catholic Diocese of Erie*, No. 12-253Erie (W.D. Pa. Mar. 4, 2014)
20. *Davis v. Baltimore Hebrew Congregation*, 985 F. Supp. 2d 701 (D. Md. 2013)
21. *Herzog v. St. Peter Lutheran Church*, 884 F. Supp. 2d 668 (N.D. Ill. 2012)
22. *Dias v. Archdiocese of Cincinnati*, No. 1:11-CV-00251 (S.D. Ohio Mar. 29, 2012)

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State Court Cases

1. *Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358 (N.C. App. 2016)
2. *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528 (Minn. 2016)
3. *Matthies v. First Presbyterian Church of Greensburg*, 28 N.E.3d 1109 (Ind. App. 2015)
4. *Galetti v. Reeve*, 331 P.3d 997 (N.M. App. 2014)
5. *Mills v. Standing General Commission on Christian Unity and Interreligious Concerns*, 986 N.Y.S.2d 60 (2014)
6. *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597 (Ky. 2014)
7. *Kant v. Lexington Theological Seminary*, 426 S.W.3d 587 (Ky. 2014)
8. *Fisher v. Archdiocese of Cincinnati*, 6 N.E.3d 1254 (Ohio App. 2014)
9. *Reese v. General Assembly of Faith*, 425 S.W.3d 625 (Tex. App. 2014)
10. *Smith v. White*, 7 N.E.3d 552 (Ohio App. 2014)
11. *Winbery v. Louisiana College*, 124 So.3d 1212 (La. App. 2013)
12. *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357 (Wash. 2012)
13. *Temple Emanuel of Newton v. Massachusetts Commission Against Discrimination*, 975 N.E.2d 433 (Mass. 2012)
14. *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878 (Wisc. 2012)

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