

Supreme Court Declines To Hear Seventh Circuit Ministerial Exception Appeal

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In a disability discrimination case involving a teacher at a Jewish school in Milwaukee, the Seventh Circuit has for the first time addressed the ministerial exception in light of the Supreme Court's 2012 *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC* decision. In *Grussgott v. Milwaukee Jewish Day School*, the court found a teacher who taught both Hebrew and Jewish studies demonstrated that her role furthered the school's religious mission and that her position therefore fell under the ministerial exception, barring her disability discrimination claims.

This case stemmed from a telephone call between a parent and the teacher during which the teacher was unable to remember an event, and the parent taunted her about her memory problems. The teacher's husband then sent an email, from the teacher's work email address, criticizing the parent for being disrespectful. The school terminated the teacher after the incident. The teacher then sued the school under the Americans with Disabilities Act (ADA), claiming that she was terminated because of her cognitive issues resulting from her brain tumor. The school countered that the ministerial exception to employment discrimination claims barred her suit.

The purpose of the ministerial exception is to allow religious employers the freedom to hire and fire those with the ability to shape the practice of their faith. The Seventh Circuit, recognizing that the Supreme Court, in *Hosanna-Tabor*, expressly declined to create a rigid formula for deciding when an employee is a minister, conducted a fact-intensive analysis considering four factors:

1. the formal title given by the church,
2. the substance reflected in that title,
3. the teacher's own use of that title, and
4. the important religious functions the teacher performed for the church.

The court found that under the totality of the circumstances here, the school expected her to play an important role in "transmitting the Jewish faith to the next generation" which outweighed other considerations.

The Supreme Court in (Case No. 18-125), declined to take up the case, without comment.