

## *The U.S. Supreme Court's Expansion of the "Ministerial Exception" Covers More than Just Ministers in Federal Discrimination Claims*

*By Keith J. Gutstein, co-managing partner of the Long Island office of Kaufman Dolowich & Voluck, LLP and co-chair of the KD Labor & Employment Law practice group and Taylor M. Ferris, KD attorney*

*Earlier this month, the U.S. Supreme Court ("the Court") issued a decision in two consolidated cases - - Our Lady of Guadalupe School v. Morrissey-Berru and St. James School v. Biel - - finding that the First Amendment Religion Clauses exempt religious employers from lawsuits alleging discrimination.*

*Here, two elementary school teachers filed lawsuits against their employers, two Roman Catholic schools, alleging that their respective employments were terminated as a result of discriminatory animus. In response, the Catholic schools cited to performance issues and inability to administer newly implemented programs in support of their decisions not to renew the plaintiffs' employment contracts. Notably, both teachers had nearly identical employment contracts, and responsibilities, including promoting the schools' missions to promote and form the students in Catholic faith. In both cases, rather than focus on the reason for termination, the respective Catholic schools invoked the ministerial exception at the lower court, and successfully moved for summary judgment. Both cases were appealed to the Ninth Circuit, which ultimately reversed the lower courts' decisions relying on the Supreme Court's decision in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171 (2012). The Ninth Circuit found that because the teachers were not ministers, and the schools did not consider them to be ministers, the ministerial exception did not apply.*

*However, in a 7-to-2 decision, the Supreme Court rejected the Ninth Circuit's rigid reading of its holding in Hosanna-Tabor. Instead, the Supreme Court focused on the teachers' responsibilities and the relevant circumstances noting that "[t]he religious education and formation of students is the very reason for the existence of most private schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission." The Court went on to say, "[j]udicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate."*

*Following this rationale, the Court held that the ministerial exception applied to the plaintiffs because their duties included providing instruction on all subjects, including religion, praying and worshipping with their students, and preparing their students for participation in other religious activities. Additionally, as the Court noted, the plaintiffs were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith. In sum, although their titles did not include the term "minister," both schools expressly saw them as playing a vital part in carrying out the employers' missions. Ultimately, the Court determined that any teacher of a religious organization who plays a role in students' religious education falls outside of the protection of federal employment discrimination laws.*

*In light of the Court's decision, several issues remain outstanding for courts to address in future litigation. To start, it is unclear how this will impact teachers who are employed by religious institutions but do not necessarily have religious responsibilities. It also remains an open question whether the ministerial exception applies to other employees who are vital to the religious institution but are not "responsible for the faith formation of the students." It also remains to be seen whether the courts will interpret this decision to potentially expand the ministerial exception to other religious entities, like hospitals, charities, and universities, and whether courts will apply this expansion to state and local laws.*

*If you have questions about these developments, please contact one of the experienced labor and employment attorneys at Kaufman Dolowich & Voluck.*