

Religious Freedom Trumps the Americans with Disabilities Act in *Hosanna-Tabor* Case

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I . Introduction

The United States' Constitution guarantees Freedom of Religion. There are many freedoms and rights that the government protects, and sometimes those freedoms can come into conflict with others. People also have the right to have their employment position protected in the event that are or become disabled. The Supreme Court had to decide which right to protect when the two came into conflict in the *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* case.¹⁾ The court found that the Americans

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with Disabilities Act (ADA) could not be enforced against religious organizations. The school at issue was allowed to use the ministerial exception as a defense against an employment discrimination suit. It appeared highly likely, considering the facts of the case, that the plaintiff was being discriminated against solely because of her disability. The court's response, however, was that it didn't matter because the First Amendment guarantees people the freedom to worship how they want, which includes deciding who they hire (or dismiss) to lead them in religious practices.

This paper will review the *Hosanna-Tabor* case. Then it will examine other cases that have used this decision in their legal reasoning and discuss what direction the law appears to be heading in the aftermath of this decision. Next comes an examination of the public responses to this decision, and finally, the paper will conclude with a brief look at how the situation relates to Korea.

II. Overview of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*

1. Facts of the Case.

The lawsuit was brought by the Equal Employment Opportunity Commission (EEOC) on behalf of Cheryl Perich. Perich was hired by Hosanna-Tabor Evangelical Lutheran Church and School as a “called”

1) *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694, 695 (2012).

teacher.²⁾ Perich’s duties included teaching secular subjects, as well as a religious class, leading her students in daily prayers and devotionals, and taking her students to weekly chapel services, which she led about twice a year.³⁾ Her difficulties started after she suffered from narcolepsy and went on disability leave during the 2004-2005 school year. When she informed the school that she could come back to work, the school told her that her position had been filled and that they would like her to resign.⁴⁾ She refused to resign and contacted an attorney. She was fired for “insubordination and disruptive behavior,” and for damaging her “‘working relationship’ with the school by ‘threatening to take legal action.’”⁵⁾ She contacted the EEOC, who brought the suit against the school alleging termination for threatening to file an ADA lawsuit. She lost at the District Court, but the Sixth Circuit vacated and remanded the suit, saying that she was not a minister and the school couldn’t use the ministerial exception found in the First Amendment.⁶⁾

2. Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability. Typically, an employer must allow reasonable accommodations for disabled employees.⁷⁾ An employer may not simply fire an employee who becomes temporarily

2) “Called” teachers are those that have been called to their vocation by God. They must “compete certain academic requirements, including a course of theological study.” *Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694, 695 (2012).

3) *Id.*, 696.

4) *Id.*

5) *Id.*

6) *Id.*

7) 42 U.S.C. § 12112 (2006).

or permanently disabled, as long as there won't be undue hardship on the employer to keep the employee. Employers may not discriminate against an employee who is disabled. Employers also may not terminate someone's employment if they threaten to exercise the rights they are guaranteed by the government, which includes the right to sue if they are discharged from their position because they express an interest in protecting themselves from disability discrimination. The ADA has an anti-retaliation clause which says, "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."⁸⁾ In this case, it appeared that the reason Perich was discharged was because she told the school she was going to sue for disability discrimination if they fired her.⁹⁾

Under normal circumstances, Perich should have been able to assert a claim under the ADA for retaliatory discharge by her employer. But there are exceptions to the ADA, which includes discretion given to religious organizations. The ADA does not force religious employers to employ someone who doesn't match the requirements of any religious work that the employer needs to be carried out.¹⁰⁾ The ADA provides religious entities with two defenses to claims of discrimination under the act, which are found under the defense section of the Act. The first is that religious bodies are allowed to give preference to employees of a particular religion when hiring

8) 42 U.S.C. § 12203(a).

9) *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694, 700 (2012).

10) 42 U.S.C. § 12113(d)(1).

people to carry out the duties of the entity.¹¹⁾ The second is that a religious organization can require that all “employees conform to the religious tenets of such organization.”¹²⁾ The EEOC and Perich argued that these defenses did not apply to retaliation claims.¹³⁾ Without these exceptions, Perich probably would have won her claim. But the court found that she was subject to these exceptions, which are typically referred to as the “ministerial exception.”

3. Issue and Court Reasoning

It was well-established by the court that the government cannot interfere with a religious organization’s ability to choose its own ministers.¹⁴⁾ The issue the court was presented with was does the First Amendment preclude a claim against a church under the ADA when the plaintiff is found to be a minister.¹⁵⁾ It is well-established that the American Constitution protects the right to exercise one’s beliefs freely. The Supreme Court had never before dealt with the issue of whether this freedom of religious organizations could be limited by allegations of employment discrimination. The lower federal courts had consistently recognized a “ministerial exception,” which precluded application of anti-discrimination laws dealing with the employment relationships between religious institutions and its ministers.¹⁶⁾ The Supreme

11) Section 12113(d)(1) (2006 ed., Supp. III).

12) Section 12113(d)(2).

13) *Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694, 701, FN1 (2012).

14) *Id.*, 704–705.

15) *Id.*, 700.

16) *Id.*, 705.

Court concluded that the ADA's prohibition on retaliation did not trump a religious organization's right to choose its own ministers, even when the law at issue is "a valid and neutral law of general applicability."¹⁷⁾ Once the court decided that the ministerial exception existed and that it applied to the ADA's prohibition on retaliation, the court had to decide if Perich qualified as a "minister" under the exception. The court held that she did.¹⁸⁾

The Supreme Court pointed out the mistakes made in the Sixth Circuit Court decision when that court defined "minister." To decide if someone is a "minister" for purposes of the ADA exception, the court should consider the employee's title; the court should not give too much weight to the fact that non-ministers perform the same duties as the employee at issue, nor to the fact that only a small amount of the employee's time is spent on non-secular duties.¹⁹⁾ The Supreme Court found the Sixth Circuit Court's was erroneous and reversed, reinstating the summary judgment decision by the District Court. The Supreme Court concluded that it does not matter if Hosanna-Tabor's religious reason for firing Perich was a pretext for terminating her employment because a church may fire a minister for any reason whatsoever. "The purpose of the exception is not to safeguard a church's decision to fire a minister when it is made for a religious reason."²⁰⁾ Instead, the purpose of the law is to allow religions complete control over who ministers to their religious needs.²¹⁾ The government may not play a role in a religious institution's internal organization.

17) *Id.*, 707.

18) *Id.*

19) *Id.*, 708-709.

20) *Id.*, 709.

21) *Id.*

4. Concurring Opinions to the Majority Decision

Justice Thomas concurred with the majority decision, but he believed that the court should not second-guess a religious organization's "sincere determination that a given employee is a 'minister' under the organization's theological tenets."²²⁾ If the court had followed Justice Thomas' opinion, there would be no inquiry into whether an employee was a minister. The court would merely accept the church's statement that an employee was a minister. What Justice Thomas wants to do is give religious organizations even greater discretion in defining their members than the majority in this case was willing to do. This decision would have resulted in the least amount of government entanglement with religious issues, but also would have provided the least amount of protection for employees who suffer discrimination by their employers.

Justice Alito and Kagan also concurred in the Supreme Court's decision. They believed the rule of whether an employee is a "minister" should be determined by examining the function performed by the employee for the religious entity, and the title of "minister" should not play a role in the court's determination.²³⁾ They suggested that the exception should apply to anyone who "leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith."²⁴⁾ It should not be limited to those that have been formally ordained.²⁵⁾ Also, the court can't question the importance and

²²⁾ *Id.*, 710.

²³⁾ *Id.*, 711.

²⁴⁾ *Id.*, 712.

²⁵⁾ *Id.*, 714.

priority of the religious doctrine in question, nor should it sit in judgment of what a church “really believes.”²⁶⁾ The court’s job is not to question the sincerity of a religion’s beliefs and tenets. Rather the court should accept church statements as true. This also protects religious freedom, but requires the court to at least examine the employee’s role in the religious organization and confirm that the employee has some role in guiding members of the religion according to their faith.

5. Future Effects of this Decision

The importance of this case is that it clearly states religious organizations are free from government intrusion when it comes to choices of leadership. The reason the court is not willing to allow the ADA to apply to ministers is because the State cannot choose spiritual instructors for religious organizations. Some people might believe that even in a case where it appears clear that the employee was discriminated against because of her disability, the ADA should apply. The problem with doing so is that it is still forcing the church to accept a religious teacher that they do not want. Religion is a very personal and important thing to individuals. Freedom of religion is a right that has been recognized in the United States since the country was founded. It makes sense that the Supreme Court would give religious organizations so much control over employees that play a central role in spreading their tenets.

26) *Id.*, 715, FN 5.

III. Where the Law is Heading

The Supreme Court found that the ministerial exception applies to the ADA, and held that the ministerial exception at least bars suits against churches brought by fired ministers. The court did not decide if the exception applies to actions brought by employees “alleging breach of contract or tortious conduct by their religious employers.”²⁷⁾ What this implies is that even though the court gave the religious employer a lot of deference over their hiring practices, the court might limit religious organizations’ discretion when the organization is violating laws other than employment discrimination. This *Hosanna-Tabor* case might be narrowly interpreted in the future so that it only protects employers when they discriminate against disabled people. But the court will probably allow this decision to apply to many different types of employment decisions made by religious organizations, as long as the decision affects a “minister.”

The court also decided that the ministerial exception operates as an affirmative defense, not a jurisdictional bar.²⁸⁾ That means that courts have jurisdiction to hear cases in which a ministerial exception might apply, and that it is up to the employer to assert that exception as an affirmative defense. This could be interpreted to mean that the courts are given some power to actually entangle themselves in questions dealing with the religious beliefs of an organization. If it was a jurisdictional bar, then once the exception was shown to apply, courts would immediately leave the employment decision up to the religious institution.

The Supreme Court refused to create a hard-line rule for what qualifies

²⁷⁾ *Id.*, 710.

²⁸⁾ *Id.*, 709, FN 4.

an employee as a minister.²⁹⁾ In the *Hosanna-Tabor* case, the court said that Perich was a minister by looking at various aspects of her position. She was called a minister, her duties including religious instruction, she was trained in religious matters, and she accepted a formal call to religious service by the church.³⁰⁾ Since the court refused to create a “rigid formula,” each case that follows where there is question of whether that person is a minister will require an inquiry into the duties performed by the employee. The problem with this is that each court will need to figure out what the requirements of a minister are for that religious organization and whether the party before them qualifies. This could lead to conflicting definitions and confusion among different jurisdictions. Though the Supreme Court stated they were unwilling to create a definition of a minister, the court did give some guiding factors that could be used to determine if the employee falls under the ministerial exception:

- (1) “the formal title given ... by the Church,”
- (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 for the Church.”³¹⁾

Since the case was decided there has been two cases brought in higher courts where the defendants claims that the terminated employee was a “minister”. In both cases, discussed below, the courts found they were not ministers. Following the cases which deal with the ministerial exception

29) *Id.*, 707.

30) *Id.*, 707–708.

31) *Id.*, 708.

are two other cases which cite the *Hosanna-Tabor* case more generally, but help give an idea of the long-reaching effects of this decision.

1. The Ministerial Exception Cases

In Ohio, a woman was fired from her employment at a Catholic school because she was pregnant through artificial insemination, which was against the Church's tenets. She claimed discrimination under the ADA (pregnancy being a short-term disability) and the school countered that she was a minister whose employment was completely at the school's discretion. The court found that she was not a minister. "Defendants here did not hold Plaintiff out as a minister, they did not give her any sort of religious title or commission, and the congregations of the Defendant churches took no role in reviewing her 'skills in ministry' or her 'ministerial responsibilities,' because she had none."³²⁾ She lacked a title indicating she had any religious purpose at the school and she was openly a non-Catholic. She would not even be allowed to lead any sort of religious instruction.³³⁾ The defendants tried to argue she was a minister because of her "role as a Catholic role model," and her "teaching and interacting with impressionable students."³⁴⁾ The court pointed out that just because a school has a religious mission does not mean that a teaching is automatically considered a "minister."³⁵⁾

32) *Dias v. Archdiocese of Cincinnati*, Slip Copy, 2012 WL 1068165 (S.D. Ohio, 2012), *5.

33) *Id.*

34) *Id.*, *5.

35) *Id.*, *5 (quoting *Equal Employment Opportunity Commission v. First Baptist Church*, No. S91-179M, 1992 U.S. Dist. LEXIS 14479, *38-9 (N.D. Ind. June 8, 1992).

A teacher may be a role model, but a teacher hired to teach purely secular materials should not be expected to exemplify the teachings of the religious institution. Because she is not a minister and she seemed to have a valid claim for pregnancy discrimination, the defendant's motion to dismiss was denied.³⁶⁾ Using this case as an example of future cases, the *Hosanna-Tabor* case will be used to allow religious institutions to ignore discrimination laws when it comes to ministers, but that "minister" will not be broadly defined. The courts will not extend the definition to include secular teachers, or using the language of the *Hosanna-Tabor* case, lay teachers.

The Tennessee Court of Appeals also has used the *Hosanna-Tabor* case's decision as part of its reasoning in a recent case where a principal of a Catholic school was dismissed after she complained about funds being used unethically by the school. The court noted that religious organizations can hire whoever they want, for any reason they want, for ministerial positions. But the court made clear that they were going to stick with a narrow interpretation of the *Hosanna-Tabor* case and would only allow the ministerial exception for ministers or employees who qualified as ministers.³⁷⁾ The court didn't rule on whether or not she was a minister. They did confirm that the *Hosanna-Tabor* decision on the ministerial exception is an affirmative defense, not a judicial bar, so that courts are allowed to hear these sorts of issues, but that the religious institution can use the exception as a defense.³⁸⁾ The court rejected the school's argument that the court didn't even have jurisdiction to hear the case if the ministerial exception

36) *Id.*, *8.

37) *Petschonek v. Catholic Diocese of Memphis*, Slip Copy, 2012 WL 1868212 (Tenn.Ct.App., 2012).

38) *Id.* at *6.

applied. Instead, the *Hosanna-Tabor* court made it clear that the exception is only to act as a defense. The court in this case was able to hear the principal's argument, but the principal's case was dismissed because she could not prove she was an at-will employee who would be able to assert a common law claim of retaliatory discharge.³⁹⁾ Because she was a contract worker and her contract was fulfilled, the school's decision to not renew her contract for another year could not be called a retaliatory action.

2. Other Uses of the *Hosanna-Tabor* Decision

In the District Court of Washington, the court had to decide if the State is able to compel pharmacists or pharmacies to distribute prescribed emergency contraceptives. The court in that case found that the law was not neutral, nor generally applicable, making the rule unconstitutional under the Free Exercise Clause of the Constitution.⁴⁰⁾ The court went on to say that States are allowed accommodate people's religious beliefs. By allowing people to follow their religious convictions, the State is not endorsing religion. The court pointed to the *Hosanna-Tabor* case as further proof that sometimes the government can, and sometimes the government must, accommodate people's religious practices.⁴¹⁾ The State was trying to argue that by allowing people to refuse to follow a law because of a genuine religious concern, the State would be in violation of the Establishment Clause, but the court was not convinced by that argument.

In a New York District Court, the court considered the issue of whether

39) *Id.* at *9.

40) *Stormans Inc. v. Selecky*, –F.Supp.2d–, 2012 WL 566775 (W.D.Wash.), *26.

41) *Id.*, FN 13.

a school can ban “ordained” religious services during after-school hours. The school was banning religious groups only and the law required that the school board must decide which “religious practices rise to the level of worship service and which do not,” which is excessive governmental entanglement with religion.⁴²⁾ The court pointed to the *Hosanna-Tabor* case to show that the government should not make inquiries into the core activities of the church. In the *Hosanna-Tabor* case, the court stated that the government was not allowed to decide whether a church employee was a “minister” so as to fall under the ministerial exception, but that the court should accept a religious organization’s statements and behavior to decide if an employee is a “minister.” In the New York court, they followed this reasoning to say that the government should not decide which religious gatherings meet the definition of a “worship service.”⁴³⁾ This suggests that courts will continue to give discretion to religious organizations when it comes to matters of defining religious elements.

Looking at these cases all together, predictions about where the law is heading can be made. It seems that the courts will allow a lot of discretion to religious organizations to define the elements of worship and church organization for themselves. But the court won’t allow a church to define all of its employees as “ministers” in order to avoid anti-discrimination employment laws. The court will require, at minimum that an employee gives some sort of religious instructions to others according to the church’s tenets. A court will accept someone as a minister as long as a church holds that person out as a minister and allows the person to give religious

42) *Bronx Household of Faith v. Board of Educ. of City of New York Community School Dist. No. 10*, –F.Supp.2d–, 2012 WL 603993 (S.D.N.Y.), *16.

43) *Id.*

instructions. Following this line of reasoning, courts won't decide which meetings of associations are organized religion and which are secular meetings. The court acknowledges that the government must allow some exemptions for religious beliefs so that people can use the freedom given to them by the Free Exercise Clause. This decision could be seen as a trend towards allowing religious organizations more discretion over their internal processes, but others might see it as a way for religions to ignore important civil rights laws that are aimed at stopping illegal discrimination. This case shows the problem that arises when two protected rights are at conflict. This time the Supreme Court supported religious freedom over protecting employment rights.

IV. Responses to *Hosanna-Tabor*

There have been many responses to the *Hosanna-Tabor* case, both positive and negative. Religious organizations believe that it's a sign that the courts are willing to grant them more freedom over their own organizations and that they will be free from government interference. On the other hand, critics of the Supreme Court decision believe that the court is not acting as a protector of those that are suffering discrimination and the religious organizations are just using religious differences as an excuse to hide their discriminatory actions.

An article in the ABA Journal pointed that this decision could create a slippery slope. One worry is that if religious organizations are free to violate the ADA in relation to a disabled person, they could also do so because of a person's gender or race.⁴⁴⁾ But if courts were to carve out

an exception for racial discrimination, they might be put in the position of deciding what qualifies as worship.⁴⁵⁾ Of course, racial discrimination has been a huge problem in the United States, dating back to before it even became a country. As pointed out by Professor Bartum in his article, in the past the Supreme Court has stated that a religious organization was not allowed to hide behind the First Amendment when it engaged in racial discrimination as seen in *Bob Jones University v. United States* 461 U.S. 574 (1983).⁴⁶⁾ But that case had nothing to do with employment practices. Instead the issue was that the religious university had discriminatory admissions practices and wanted to continue to receive tax-exempt status.⁴⁷⁾ The court would not allow them to keep their tax-exempt status because it was meant for charitable institutions that advanced public policy.⁴⁸⁾ Racial discrimination is clearly against public policy goals.

Besides worries about racial discrimination being allowed under the ministerial exception, author Esbeck pointed that ministers could also lose Title VII protection. Another affect from this decision could be that sexual harassment claims would be dismissed if the plaintiff was a minister for the purposes of the ministerial exception.⁴⁹⁾ Lower level courts have already dismissed sexual discrimination claims where the ministerial exception

44) Stephanie Francis Ward, *Preach the Children Well: Employment Lawyers Puzzle Over "Ministerial Exception"*, A.B.A. J., June 2012, at 22.

45) *Id.*

46) Ian Bartrum, *Religion and Race: The Ministerial Exception Reexamined*, 106 Nw. U. L. Rev. Colloquy 191 (2011).

47) *Bob Jones University v. United States* 461 U.S. 574 (1983).

48) *Id.*

49) Carl H. Esbeck, *A Religious Organizations' Autonomy in Matters of Self-Governance: Hosanna-Tabor and the First Amendment*, 13 Engage: J. Federalist Soc'y Prac. Groups 114, 116 (2012).

applied.⁵⁰⁾ The court's decision in *Hosanna-Tabor* could have negative impact on people trying to protect themselves from sexual harassment at work because employers will have a shield against such claims.

Another fear is that this decision will still keep the government involved in making religious determinations. Because *Hosanna-Tabor* stated that the ministerial exception acts as an affirmative defense and not a jurisdictional bar, the court will be able to investigate the issues raised by the plaintiff by examining the religious organization's practices and will need to determine if the plaintiff actually is a minister for the exception to apply.⁵¹⁾ As pointed out by author Zelinsky, courts will still have some entanglement with religion while it makes its determinations.

An American Bar Association publication was concerned that the court's decision expands the meaning of what a "minister" is.⁵²⁾ By broadening the definition of minister, less people will be able to claim protection of anti-discrimination laws. Perhaps the decision in *Hosanna-Tabor* will only apply to disability discrimination cases, but that is unlikely. The court did not expressly limit its holding to disability cases and lower courts have

50) See generally *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299 (11th Cir. Ala. 2000), *Barton v. MikelHayes*, Not Reported in F.Supp.2d, 2010 WL 3927605 (N.D.N.Y. 2010) and *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.2d 1238 (10th Cir. Okla. 2010), where the ministerial exception was allowed to bar sexual harassment suits.

51) Edward A. Zelinsky, *Do Religious Tax Exemptions Entangle in Violation of the Establishment Clause? The Constitutionality of the Parsonage Allowance Exclusion and the Religious Exemptions of the Individual Health Care Mandate and the FICA and Self-Employment Taxes*, 33 CDZLJ 1633, 1676 (2012).

52) Thompson Publishing Group, *U.S. Supreme Court Upholds Religious Exemption in ADA Case*, 23 No. 3 ADA Compliance Guide Newsletter 1, March 2012.

already allowed the exception to be used in various discrimination cases.

For the most part, religious organizations are happy with the court's decision. They feel that their interests are being protected by the court. However, many proponents for employee rights are unhappy about this decision. They are worried religious institutions will ignore employment protection laws and that employees will suffer, even when the employer's decision that adversely affects the employee has nothing to do with religion.

V. Comparison to Korea and Concluding Thoughts

In Korea there are laws against employment disability discrimination found in the Anti-Discrimination Against and Remedies for Persons with Disabilities Act and Enforcement Decree of 2011. The Act protects people suffering from long-term disabilities.⁵³⁾ Their employers must offer disabled employees similar help as seen under the American law of reasonable accommodations.⁵⁴⁾ The law does not make any mention of exemptions for religious organizations. Based on the author's research, it appears that religious institutions are allowed to discriminate against potential employees by insisting everyone they hire proves their devotion to the organization's beliefs. This is not so different from what is allowed in the United States. American employers are allowed to only hire employees who share the faith of a religious institution. But it must be a religious institution. Secular businesses cannot discriminate based on religion.

53) Anti-Discrimination Against and Remedies for Persons with Disabilities Act and Enforcement Decree of 2011, Chapter 2, Section 1, Article 10 (2011).

54) *Id.*, Chapter 2, Section 1, Article 11 (2011).

In 2010, the National Human Rights Commission requested that universities run by religious foundations not discriminate against potential employees who held beliefs different from those advocated by the institutions.⁵⁵⁾ The universities' responses were that they only wanted employees who could help fulfill their religious missions.⁵⁶⁾ Religious organizations in the United States are allowed to only hire members of their professed faith, so what religious Korean institutions are doing is not that different from their American counterparts. It is unclear whether religious Korean institutions would be required to follow the Anti-Discrimination Against and Remedies for Persons with Disabilities Act, but considering there is no exemption for religious institutions, a person who suffered discrimination because of a disability might be able to make a case in the Korean court system.

Korea could offer their disabled workers more protection than the American government allows after the *Hosanna-Tabor* case. Since the disability law is still developing and growing in Korea, the Korean government can make its own determinations on what values it will find the most compelling. Of course, freedom of religion and the freedom to choose religious leaders are paramount to a free, democratic society, but maybe, at least in cases where there is clear disability discrimination, religious organizations should be denied the right to violate discrimination laws. The American Supreme Court allows religious organizations the freedom to choose who offers religious instructions, but this freedom will only extend to those that fall within the ministerial exception. Those

55) Kang, Shin—who, *Religious Schools Urged to be Fair on Non-believers*, Korea Times (Korea) 10 September 2010.

56) *Id.*

employees who perform purely secular jobs at religious institutions should still be protected by anti-discrimination laws, including the ADA. It is important for the courts to navigate carefully between such important liberties, such as freedom of religion, while still offering protection to those that are most vulnerable to discriminatory practices. It will be interesting to see how the law in this area continues to develop. Clearly the *Hosanna-Tabor* judgment emphasizes the discretion that religious organizations have over employment decisions. Other lawsuits will be brought to test how far this discretion will extend.

(투고일 2012년 8월 9일, 심사(의뢰)일 2012년 9월 17일 게재확정일 2012년 10월 12일)

Key Words : Americans with Disabilities Act (ADA), church, discrimination, employment discrimination, First Amendment, minister, ministerial exception, religious freedom, religious institution, religious school.

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종교의 자유가 미국장애인법을 이기다

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이 논문은 최근 결정된 대법원 판결 Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC에 대한 연구이다. 법원은 종교단체가 성직자를 고용할 때, 미국 장애 복지 법을 고려할 필요가 없다고 판결을 내렸다. 이 사례는 성직 임명에 대한 예외 조항 아래 미국 장애 복지 법에 의해 어떤 종류의 고용이 보호 받지 못 하는지 연구하고 있다. 고소당한 여성은 그녀 자신을 선생님이라고 여겼지만, 대법원은 성직 임명에 대한 예외 조항으로 그녀를 성직자로 여겼다. 대법원의 결정을 내린 후, 다른 법원은 이 사례의 규칙을 사법권의 쟁점에 적용했다. 대법원의 결정은 정부의 간섭에서 벗어나 자유롭고, 종교 단체에게 스스로 통치할 수 있는 재량권을 줄 것을 확정했다. 법원은 계속해서 종교단체가 그들의 믿음을 규정하고, 종교 문제에 대해 누가 그들을 이끌 것인지 선택하게 할 것이다. 법원은 어떤 이유에서든지 종교 교육을 제공하지 않는 고용인을 해고 하는 것에 대해 처벌하지 않을 것이다.

주제어 : 미국장애인법, 교단, 차별, 고용차별, 수정 제1조, 성직자, 종교의 자유, 종교기관, 신학교

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