

Seventh Circuit Bars Minister's Claims of Sex- and Disability-Based Harassment

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The ministerial exception stems from the First Amendment of the Constitution's Religion Clauses and provides religious organizations a broad exemption from employment discrimination laws that would otherwise apply to the hiring and firing of ministerial employees. The Seventh Circuit, sitting *en banc*, recently held on July 9, 2021, in *Demkovich v. St. Andrew the Apostle Parish and the Archdiocese of Chicago*, that the [ministerial exception](#) also bars hostile work environment claims.

The *Demkovich* decision was preceded by two significant Supreme Court cases repeatedly cited in the Seventh Circuit's opinion as providing clarity and guidance about the scope of the ministerial exception. In the 2012 Supreme Court case *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Court, recognizing the central importance of ministers to religious organizations, assured their absolute freedom to choose those ministers by barring ministerial employees from bringing employment discrimination claims. In that case, the issue before the Court was whether a teacher in a religious school who taught secular subjects should be considered a minister. The Court answered in the affirmative. Based on several specific facts about the teacher's duties and status, she qualified as a minister and thus the EEOC was barred from bringing a disability claim challenging her termination.

More recently, in *Our Lady of Guadalupe v. Morrissey-Berru*, decided in July 2020, the Court held that the primary consideration in deciding whether the ministerial exception bars a claim turns on the tasks the employee performed. In determining whether two Catholic school teachers could assert [age](#) or [disability](#) wrongful termination claims, the Court held that they could not because the tasks they performed were "vital religious duties."

These Supreme Court cases analyzed the scope of the ministerial exception in tangible employment actions, such as hiring and firing, and defined who qualifies as a ministerial employee. In *Demkovich*, the Seventh Circuit answered a different question—whether the ministerial exception also prevents a minister from asserting claims based on intangible employment actions, such as hostile work environment claims.

Background on the Hostile Workplace Claim

To briefly recap, Sandor Demkovich was a ministerial employee for the Archdiocese of Chicago and St. Andrew Parish in Calumet City. Saint Andrews' Pastor, Reverend Jacek Dada, who supervised Mr. Demkovich, often made derogatory and demeaning comments to Mr. Demkovich about his status as an openly gay man with a same-sex partner. Reverend Dada also made humiliating and belittling comments about Mr. Demkovich's weight. Mr.

Demkovich has diabetes and a metabolic condition that causes weight gain. Reverend Dada insisted Mr. Demkovich walk his dog so that he could lose weight; he commented that Mr. Demkovich needs to lose weight because he did not want to preach at Mr. Demkovich's funeral, and Reverend Dada complained about the cost of keeping Mr. Demkovich on the parish's health and dental insurance plans. After enduring this ongoing verbal abuse, Mr. Demkovich was then terminated in 2014, shortly after marrying his same-sex partner.

Procedural History

Mr. Demkovich filed suit against Saint Andrews Parish and the Archdiocese of Chicago and asserted claims under Title VII and the Americans with Disabilities Act ("ADA"), as well as a common law claim for wrongful termination in violation of public policy. The defendants moved to dismiss, arguing the suit was barred by the ministerial exception. The district court granted the defendants' motion to dismiss, without prejudice, holding that the ministerial exception barred Mr. Demkovich's claims of disparate treatment under Title VII and the ADA, as well as his wrongful termination claim. Mr. Demkovich filed an amended complaint, in which he brought claims for a hostile work environment under Title VII and the ADA for the discriminatory harassment to which the defendants had subjected him based on his sex, sexual orientation, marital status, and disability. Again, the defendants moved to dismiss, arguing the ministerial exception barred the hostile work environment claims too.

To assess the applicability of the exception to hostile work environment claims, the court used a balancing test to determine whether adjudication of these claims would necessitate "excessive entanglement" by the court with religious matters as prohibited by the First Amendment. The court concluded that several factors weighed in favor of the church with respect to Mr. Demkovich's Title VII claims alleging a hostile work environment based on sex, sexual orientation, and marital status: allowing church leaders to decide who leads the faithful and what qualities those leaders have; the religious justification for many of Reverend Dada's remarks, which were in accord with Catholic doctrine on same-sex marriage; and procedural concerns over the need to probe for animus and an intrusive discovery process. Given these concerns, the district court granted the defendants' motion to dismiss Mr. Demkovich's Title VII claims, but denied it with respect to his claims under the ADA.

Once discovery began, on St. Andrews' motion, the district court certified the following question to the Seventh Circuit: "under Title VII and the Americans with Disabilities Act, does the ministerial exception ban all claims of a hostile work environment brought by a plaintiff who qualifies as a minister, even if the claim does not challenge a tangible employment action?" A panel of three judges on the Seventh Circuit heard the interlocutory appeal, and we discussed its analysis [here](#). In a 2-1 decision, the panel reversed the district court's dismissal of Mr. Demkovich's sex, sexual orientation, and marital status hostile work environment claims under Title VII, allowing all of his claims to proceed. The Seventh Circuit then voted to hear the case *en banc* and reheard the interlocutory appeal.

Analysis of the Court's Decision in *Demkovich*

Judge Brennan authored the majority decision. The court began by discussing the history and importance of the ministerial exception in assuring religious organizations' autonomy in selecting their ministers and in preventing excessive government entanglement with

religious organizations. The court drew two principles from *Hosanna-Tabor* and *Our Lady of Guadalupe*—that their rationale should extend to “the entire employment relationship, including hiring, firing, and supervising in between,” and that the harms the ministerial exception prevents are civil intrusion into religious matters and excessive entanglement.

The court first discussed why it concluded that permitting Mr. Demkovich’s hostile work environment claims to go forward would interfere with the church’s independence in its ministerial relationships. Recognizing that ministers are the primary instrument for a religious organization’s fulfillment of its purpose, the court concluded that allowing hostile environment claims would interfere with the organization’s autonomy just as much as allowing challenges to discrimination in hiring or firing decisions. The court observed that the “contours of the ministerial relationship are best left to a religious organization, not a court.” The Supreme Court in *Our Lady of Guadalupe* had stated that a church’s independence in matters of faith and doctrine “requires the authority to select, *supervise*, and if necessary, remove a minister without interference by secular authorities” and the Seventh Circuit thought that language compelled the conclusion that the ministerial exception should also bar inquiry into the justification for a hostile work environment.

The court then explored the ways in which permitting hostile work environment claims would lead “to impermissible intrusion into, and excessive entanglement with, the religious sphere.” The court was concerned that adjudicating Mr. Demkovich’s claims, which center on his relationship with his supervisor, a fellow minister, would intrude upon the religious realm, and interfere with the organization’s internal governance by turning the “spiritual into the secular.” A hostile work environment claim brings the entire ministerial relationship under invasive examination. In the court’s view, probing the ministerial work environment interferes with a religious group’s right to shape its own faith and mission because what one minister says in the supervision of another “could constitute stern counsel to some or tread into bigotry to others.” The court was also concerned that adjudicating Mr. Demkovich’s claims would lead to excessive entanglement as a court would engage in “endless inquiries” into whether discriminatory acts were based in doctrine or secular animus, which “is no task for a judge or a jury.”

The court noted the history of this case, which shows “the prejudicial effects of incremental litigation” and was also concerned that if the church were to assert a defense under *Burlington Industries, Inc. v. Ellerth*, every aspect of its internal procedures would come under scrutiny, and these ecclesiastical matters are not the concern of courts. The court acknowledged that various cases against religious institutions have been allowed to proceed, including tax disputes, property disputes, and tort claims, but considered such legal claims different because the ministerial exception applies to religious organizations, not to individuals within them who may be liable for torts or guilty of crimes. Given these concerns, Mr. Demkovich’s claims were dismissed.

The court recognized that there is a split among the circuits on whether the ministerial exception covers hostile work environment claims. The Seventh Circuit has now joined the conclusion the Tenth Circuit reached in 2010 in *Skrzypczak v. Roman Catholic Diocese of Tulsa*, holding that the ministerial exception bars all hostile work environment claims. In contrast, the Ninth Circuit held in 2004 in *Elvig v. Calvin Presbyterian Church*, that the ministerial exception does not categorically bar ministers’ hostile work environment claims

where the religious employer denies or disavows the conduct. Three judges dissented from the court's decision in *Demkovich*, pointing out that the majority seemed to assume that the Supreme Court had already decided the issue, which it clearly has not. Judge Hamilton wrote the dissenting opinion, and its rationale closely tracked the analysis in the earlier panel's vacated opinion, which he also authored. These differing opinions make clear that deciding the reach of the ministerial exception is not a simple task. For now, ministers' harassment claims will fare differently depending on the jurisdiction in which they pursue their claims, and it remains an open question how courts outside of the 7th, 9th, and 10th circuits will evaluate such claims. No doubt the Supreme Court will eventually be required to decide the scope of the ministerial exception.