

Seventh Circuit Preaches on the Ministerial Exception

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By [Jesse R. Dill](#)

For the first time since a 2012 decision by the Supreme Court of the United States, the Seventh Circuit Court of Appeals elaborated on and applied the Supreme Court's four-factor analysis to determine whether a position is properly considered a ministerial role. In its recent decision in *Grussgott v. Milwaukee Jewish Day School, Inc.*, No. 17-2332 (February 13, 2018), the Seventh Circuit broke a 2-to-2 tie among the four factors and held that the circumstances in the case of a teacher at a Jewish school supported the conclusion that the teacher's position was subject to the ministerial exception.

For the first time since a 2012 decision by the Supreme Court of the United States, the Seventh Circuit Court of Appeals elaborated on and applied the Supreme Court's four-factor analysis to determine whether a position is properly considered a ministerial role. In its recent decision in *Grussgott v. Milwaukee Jewish Day School, Inc.*, No. 17-2332 (February 13, 2018), the Seventh Circuit broke a 2-to-2 tie among the four factors and held that the circumstances in the case of a teacher at a Jewish school supported the conclusion that the teacher's position was subject to the ministerial exception. This ruling provides important guidance for any religious organization that may defend against a claim of employment discrimination and highlights the importance of actual practices to determine whether the ministerial exception may apply.

Background: The Supreme Court Decision

In 2012, the Supreme Court recognized the "ministerial exception" as an affirmative defense to employment discrimination claims brought against religious organizations in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012). This defense recognizes the strong interests of religious organizations to select the individuals who hold ministerial positions and prohibits application of equal employment opportunity laws to the adverse decisions that those employers might make with regard to these employment relationships.

An initial step to applying the ministerial exception is determining whether a position is ministerial in nature. In *Hosanna-Tabor*, the Court guided lower courts to conduct a fact-intensive analysis that considers the

following four factors:

- the employee's formal title;
- the substance reflected in that title;
- the individual's own use of that title; and
- the important religious functions the individual performed for the religious organization.

Background: The Grussgott Case

Miriam Grussgott, a teacher at a private Jewish school, taught Hebrew, attended community prayer sessions, discussed Jewish values, taught about prayers and the Torah, and discussed Jewish holidays and symbolism with her students. In 2013, Grussgott was treated for a brain tumor and took leave from the school. She returned to the school in 2014, but suffered memory and cognitive issues.

In 2015, the school discharged Grussgott after her husband criticized a parent who taunted Grussgott about her memory problems. Grussgott sued the school under the Americans with Disabilities Act, claiming it had discriminated against her because of the effects of her brain tumor.

The Seventh Circuit's Decision

The Seventh Circuit's opinion focused on whether Grussgott held a "ministerial" position with the school such that the Americans with Disabilities Act did not apply to the school pursuant to *Hosanna-Tabor*. The court relied on the factors identified in the *Hosanna-Tabor* opinion as the framework for its analysis.

The court found that the first and third factors did not support the ministerial exception in Grussgott's case. First, the court found that Grussgott's "grade school teacher" job title was of a lay nature that did not favor applying the ministerial exception. Second, the court determined that how Grussgott used her title also did not support the ministerial exception because there was no evidence that she held herself out to the public as holding a religious position.

However, the substance reflected in Grussgott's title—the second factor—supported the ministerial exception because the school expected its teachers to follow a religious curriculum and integrate religious teachings into their lessons. Finally, the last factor—performance of religious functions—also weighed in favor of applying the ministerial exception because Grussgott taught the students religious practices and practiced the Jewish faith with her students.

Striking a numerical balance through analysis of these factors, the Seventh Circuit broke the tie by highlighting the "totality of the circumstances" approach encouraged by the Supreme Court in *Hosanna-Tabor*. The court held in high regard the fact that the school intended Grussgott's position to be tied to the school's religious mission and viewed her as a "teacher of [its] faith" to students. Under these circumstances,

the Seventh Circuit concluded that Grussgott's position was subject to the ministerial exception and affirmed the district court's decision in favor of the school.

Key Takeaways

For employers of a religious nature, this opinion presents additional insight into how the ministerial exception will be scrutinized by federal courts in Illinois, Indiana, and Wisconsin. The Seventh Circuit's analysis strongly suggests that the substantive job duties and responsibilities carried out by an employee will hold greater weight than simply the formal title of a position to determine whether an employer may be exempt from federal equal employment opportunity requirements. This case also highlights an important defense to discrimination claims brought against religious organizations.

AUTHOR



Jesse R. Dill

Shareholder, [Milwaukee](#)

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