Ministerial exception, grounded in Religion Clauses of the First Amendment, operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar; issue presented by the exception is whether the allegations the plaintiff makes entitle him to relief, not whether the court has power to hear the case; abrogating *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223 and *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036. U.S.C.A. Const.Amend. 1.

13 Cases that cite this headnote

West Codenotes

Limited on Constitutional Grounds
42 U.S.C.A. § 12112; Mich. Comp. Laws Ann. § 37.1602.

****695** *Syllabus*[*]

Petitioner **Hosanna–Tabor Evangelical Lutheran Church** and School is a member congregation of the **Lutheran Church**–Missouri Synod. The Synod classifies its school teachers into two categories: "called" and "lay." "Called" teachers are regarded as having been called to their vocation by God. To be eligible to be considered "called," a teacher must complete certain academic requirements, including a course of theological study. Once called, a teacher receives the formal title "Minister of Religion, Commissioned." ****696** "Lay" teachers, by contrast, are not required to be trained by the Synod or even to be **Lutheran**. Although lay and called teachers at **Hosanna–Tabor** generally performed the same duties, lay teachers were hired only when called teachers were unavailable.

After respondent Cheryl Perich completed the required training, **Hosanna–Tabor** asked her to become a called teacher. Perich accepted the call and was designated a commissioned minister. In addition to teaching secular subjects, Perich taught a religion class, led her students in daily prayer and devotional exercises, and took her students to a weekly school-wide chapel service. Perich led the chapel service herself about twice a year.

Perich developed narcolepsy and began the 2004–2005 school year on disability leave. In January 2005, she notified the school principal that she would be able to report to work in February. The principal responded that the school had already contracted with a lay teacher to fill Perich's position for the remainder of the school year. The principal also expressed concern that Perich was not yet ready to return to the classroom. The congregation subsequently offered to pay a portion of Perich's health insurance premiums in exchange for her resignation as a called teacher. Perich refused to resign. In February, Perich presented herself at the school and refused to leave until she received written documentation that she had reported to work. The principal later called Perich and told her that she would likely be fired. Perich responded that she had spoken with an attorney and intended to assert her legal rights. In a subsequent letter, the chairman of the school board advised Perich that the congregation would consider whether to rescind her call at its next meeting. As grounds for termination, the letter cited Perich's "insubordination and disruptive behavior," as well as the damage she had done to her "working relationship" with the school by "threatening to take legal action." The congregation voted to rescind Perich's call, and **Hosanna–Tabor** sent her a letter of termination.

Perich filed a charge with the Equal Employment Opportunity Commission, claiming that her employment had been terminated in violation of the Americans with Disabilities Act. The **EEOC** brought suit against **Hosanna–Tabor**, alleging that Perich had been fired in retaliation for threatening to file an ADA lawsuit. Perich intervened in the litigation. Invoking what is known as the "ministerial exception," **Hosanna–Tabor** argued that the suit was barred by the First Amendment because the claims concerned the employment relationship between a religious institution and one of its ministers. The District Court agreed and granted summary judgment in **Hosanna–Tabor's** favor. The Sixth Circuit vacated and remanded. It recognized the existence of a ministerial exception rooted in the First Amendment, but concluded that Perich did not qualify as a "minister" under the exception.

Held :

1. The Establishment and Free Exercise Clauses of the First Amendment bar suits brought on behalf of ministers against their **churches**, claiming termination in violation of employment discrimination laws. Pp. 702 – 707.

(a) The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Familiar with life under the established **Church** of England, the founding generation sought to foreclose the possibility of a national **church**. By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ****697** ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices. Pp. 702 – 704.

(b) This Court first considered the issue of government interference with a **church's** ability to select its own ministers in the context of disputes over **church** property. This Court's decisions in that area confirm that it is impermissible for the government to contradict a **church's** determination of who can act as its ministers. See Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666; Kedroff v. Saint Nicholas Cathedral of Russian Orthodox **Church** in North America, 344 U.S. 94, 73 **S.Ct**. 143, 97 L.Ed. 120; Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich, 426 U.S. 696, 96 **S.Ct**. 2372, 49 L.Ed.2d 151. Pp. 704 – 705.

(c) Since the passage of Title VII of the Civil Rights Act of 1964 and other employment discrimination laws, the Courts of Appeals have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers. The Court agrees that there is such a ministerial exception. Requiring a **church** to accept or retain an unwanted minister, or punishing a **church** for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the **church**, depriving the **church** of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

The EEOC and Perich contend that religious organizations can defend against employment discrimination claims by invoking their First Amendment right to freedom of association. They thus see no need—and no basis—for a special rule for ministers grounded in the Religion Clauses themselves. Their position, however, is hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations. The Court cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers.

The **EEOC** and Perich also contend that Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872, 110 **S.Ct**. 1595, 108 L.Ed.2d 876, precludes recognition of a ministerial exception. But Smith involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal **church** decision that affects the faith and mission of the **church** itself. Pp. 705 – 707.

2. Because Perich was a minister within the meaning of the ministerial exception, the First Amendment requires dismissal of this employment discrimination suit against her religious employer. Pp. 707 – 710.

(a) The ministerial exception is not limited to the head of a religious congregation. The Court, however, does not adopt a rigid formula for deciding when an employee qualifies as a minister. Here, it is enough to conclude that the exception covers Perich, given all the circumstances of her employment. **Hosanna**–**Tabor** held her out as a minister, with a role distinct from that of most of its members. That ****698** title represented a significant degree of religious training followed by a formal process of commissioning. Perich also held herself out as a minister by, for example, accepting the formal call to religious service. And her job duties reflected a role in conveying the **Church's** message and carrying out its mission: As a source of religious instruction, Perich played an important part in transmitting the **Lutheran** faith.

In concluding that Perich was not a minister under the exception, the Sixth Circuit committed three errors. First, it failed to see any relevance in the fact that Perich was a commissioned minister. Although such a title, by itself, does not automatically ensure coverage, the fact that an employee has been ordained or commissioned as a minister is surely relevant, as is the fact that significant religious training and a recognized religious mission underlie the description of the employee's position. Second, the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as Perich. Though relevant, it cannot be dispositive that others not formally recognized as ministers by the **church** perform the same functions—particularly when, as here, they did so only because commissioned ministers were unavailable. Third, the Sixth Circuit placed too much emphasis on Perich's performance of secular duties. Although the amount of time an employee spends on particular activities is relevant in assessing that employee's status, that factor cannot be considered in isolation, without regard to the other considerations discussed above. Pp. 707 – 710.

(b) Because Perich was a minister for purposes of the exception, this suit must be dismissed. An order reinstating Perich as a called teacher would have plainly violated the **Church's** freedom under the Religion Clauses to select its own ministers. Though Perich no longer seeks reinstatement, she continues to seek frontpay, backpay, compensatory and punitive damages, and attorney's fees. An award of such relief would operate as a penalty on the **Church** for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that **Hosanna**–**Tabor** was wrong to have relieved Perich of her position, and it is precisely such a ruling that is barred by the ministerial exception.