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In 2-1 Decision, Second Circuit Finds Hospital’s Pastoral Care Department Supports Application of Ministerial Exception

In 2012, a unanimous Supreme Court recognized the “ministerial exception”¹ doctrine, which requires civil courts to abstain from interfering in employment decisions involving ministers of religious groups. Since then, few appellate courts have unpacked the corollary questions of who is a “minister,” and even fewer have addressed what type of entity is a “religious group” entitled to claim the exception. On March 7, in *Penn v. New York Methodist Hospital*,² the Second Circuit squarely addressed the “religious group” question, finding that a hospital which had shed much of its formal religiosity but retained its Department of Pastoral Care in furtherance of a critical aspect of its religious identity properly invoked the ministerial exception in response to discrimination claims from a chaplain within that Department.

The *Penn* case arose out of a race and religious discrimination complaint filed by Marlon Penn, an African-American Methodist, who had worked as a chaplain in the Department of Pastoral Care of New York Methodist Hospital (“Hospital”), until alleged deterioration in Penn’s performance in his chaplain function led the Hospital to terminate his employment. At the time of the litigation, the Hospital had no formal association with the United Methodist Church, which had founded the Hospital in 1881, having removed all references to its “Church related character” and “relationship with the United Methodist Church” from its governing corporate documents in 1975. Yet the Hospital took care to keep vestiges of its religious heritage and history as the first Methodist hospital in the world, and specifically maintains a Department of Pastoral Care in order to provide ecumenical services to patients and families, including end-of-life rituals, counseling, and chapel services. The Department employs chaplains and supports services and rituals of numerous faiths.

In response to Penn’s lawsuit, the Hospital invoked the ministerial exception, arguing that Penn’s claims invaded the Hospital’s autonomy to select its ministers. Penn objected, asserting that the Hospital was not sufficiently religious to invoke the doctrine. The district court sided with the Hospital, finding that the Hospital’s historical connection with the United Methodist Church, its mission statement emphasizing an ecumenical program of pastoral care, and Penn’s own identification as a Methodist were sufficient to warrant application of the exception.

On appeal, the Second Circuit agreed. Surveying the limited cases analyzing religious groups, the Second Circuit noted that other courts have applied the exception in cases involving “religious affiliated entities,” whose missions are marked by “clear or obvious religious characteristics.” Acknowledging that the exception is flexible and requires consideration of both the employer and the duties of the employee, the court weighed the Hospital’s formal distance from the United Methodist Church and diminished religious identity against the fact that the Hospital purposefully retained the Department of Pastoral Care – where Penn worked – to provide “indisputably religious” services to its patients. The court highlighted Penn’s admission that he exclusively provided religious

care in his chaplain role, and concluded that the Hospital’s multid denominational approach to pastoral care did not reduce the religious nature of the services provided. Thus, adjudicating the disagreements about Penn’s pastoral performance would have plunged the court into ecclesiastical entanglement forbidden by the First Amendment. Therefore, the court found that the Hospital, “through its Department of Pastoral Care, is a ‘religious group’” entitled to invoke the ministerial exception.

The court did not reach the question of whether hospitals that have secular origins (but also chaplaincies) could generally invoke this exception, nor did the court opine on the scope of the Hospital’s ability to invoke the exception for employment disputes outside of the Department of Pastoral Care. While the dissent criticized the majority’s focus on the Department of Pastoral Care, arguing that the Hospital is predominantly secular and should therefore be precluded from religious autonomy protections, the court’s opinion offers flexibility to define a religious group as a unit, division or department that serves

religious purposes housed within a more secular institution with historical religious roots. It further endorses the concept that a religious group need not be limited to a single religion or faith to be deemed religious for constitutional purposes.

More broadly, the *Penn* opinion reminds institutions that corporate governance documents, policies and mission statements are key to a court’s consideration of religious identity. As organizations evolve over time, it is prudent to pay heed to those documents and be purposeful that the documents accurately reflect the institution’s identity and ongoing mission.

¹ *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012).

² No. 16-474-CV, -- F.3d --, 2018 WL 1177293 (2d Cir. Mar. 7, 2018).



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