

No. 21-1234

IN THE UNITED STATES COURT OF APPEALS
for the
FIRST CIRCUIT

HOSANNA-TABOR EVANGELICAL CHURCH AND SCHOOL
Petitioner

v.

EQUAL OPPORTUNITY EMPLOYMENT COMMISSION
Respondent

*On Remand from the
Supreme Court of the United States*

Brief for Petitioner

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SUMMARY OF ARGUMENT

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Establishment and Free Exercise Clauses are rooted in the Founders' understanding that "the best interest of a society require[s] that the minds of men always be wholly free." Therefore, these Religion Clauses prohibit the "excessive entanglement" of church and state. In particular, "there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs" when hearing internal church disputes. Therefore, lower courts have developed the "ministerial exception," by which the courts will not examine a church's decision to hire or fire its ministers.

ARGUMENT

A. Standard of Review

The parties contest the appropriate standard of review regarding the ministerial exception. Petitioner Hosanna-Tabor requests this Court

to consider the claim as a challenge to subject-matter jurisdiction as did both the district court and the Court of Appeals. Thus the legal conclusions of the lower courts are reviewed de novo, and factual findings are affirmed unless clearly erroneous.¹

The district court's judgment was not *specifically* in response to a 12(b)(1) motion. Instead, the court issued its judgment in response to a Rule 56 motion for summary judgment. Typically, an entry of summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

B. The Ministerial Exception is a necessary consequence of the First Amendment's guarantee of Freedom of Religion

This ministerial exception, however, is not merely a prudential doctrine of judicial restraint, but a necessary consequence of the Constitution's commitment to religious freedom.² While this Court has not

¹ This is almost always true. It is stupid to write this in every brief and opinion.

² This commitment to religious freedom is reflected in the First Amendment's twin promises of free-exercise and non-establishment.

spoken directly to the ministerial exception, the doctrine follows directly from this Court's interpretation of the Establishment and Free Exercise Clauses.

Respectfully Submitted,

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October 16, 2021

CERTIFICATE OF COMPLIANCE

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s/ *Brendan Bernicker*

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October 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing brief with the Clerk of the United States Court of Appeals for the First Circuit via the appellate CM/ECF system this 30th day of August, 2021. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Brendan Bernicker

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October 16, 2021