

[Law: How a Recent Supreme Court Ruling Impacts US Hindu Temples](#)

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Law

## How a Recent Supreme Court Ruling Impacts US Hindu Temples

The "ministerial exception" to US employment law likely applies to Hindu temple priests and hired religious teachers when considered as ministers

By Paul Yogananda Desantis

In this article, attorney Paul DeSantis examines in technical detail how the "Hosanna" decision applies to Hindu temples and offers suggestions from his experience on temple management.

In January, 2012, the US supreme court issued an important First-Amendment, freedom-of-religion decision that strengthened protections for all churches, temples and other religious institutions. "Hosanna-Tabor Evangelical Lutheran Church and School vs. Equal Employment Opportunity Commission" found in favor of a church in Redford, Michigan, and against its disabled church leader/employee, Cheryl Perich, as well as against the government agency responsible for protecting disabled individuals, the Equal Employment Opportunity Commission. Beyond the issue of disability, the decision has important implications that apply to most religious institutions in the US, including Hindu temples. In brief, any employee who is considered by the organization as a "minister" may be terminated at will without triggering antidiscrimination laws.

### The Case

To decide whether the Church was entitled to the "ministerial exemption" from governmental disability requirements, the Court was required to answer two questions: Was Perich a minister (leader) of the Church? Yes, said all the justices. Perich was a minister/leader of the Church, which justified the Church's claim for a "ministerial exception" to Equal Employment Opportunity Commission

regulations designed to protect US disabled citizens. The second question was: What type of inquiry should the Court conduct when a religious institution claims a ministerial exception to a governmental regulation? On that question there were three different answers given by the justices, ranging from a court-ordered investigation into the Church's doctrine, to accepting at face value the claim that the person is a minister.

## Why is Hosanna Important?

First, it is one of the Court's rare major Constitutional decisions in which all the justices voted in favor of the outcome, even though the majority and concurring opinions provided different reasons for their outcome. Second, Hosanna provides a carefully reasoned First-Amendment discussion, which displayed sensitivity to the needs of religious institutions to set higher standards of conduct than citizens are required to follow under civil law. One of the rules at the heart of the Lutheran Church is the "consensus" requirement, an arrangement which runs counter to common secular democratic principles where only a majority vote is required. Indeed, the US Supreme Court itself works on a majority rule basis. Third, the Hosanna First Amendment ruling applies to US Hindu organizations, giving them additional protection from state interference while performing their religious duties.

Perich taught fourth grade at the Church's school, led the students in prayer and was expected to "integrate faith into all subjects." She took courses in Lutheran theology to increase her official status from a "lay" teacher to a "called" teacher. In June, 2004, she suffered from narcolepsy and was unable to work. The Church replaced her. In January, 2005, Perich said she was ready to return to work the following month. The Church administrator said the Church had already hired a lay teacher for the academic year. Further, the administrator did not feel she was well enough to teach again. Perich threatened to sue. The Church then dismissed Perich from her teaching post, an act thought to be within its rights because she was a "called teacher," considered by the Church as a type of minister, though she was not an ordained minister. By threatening to sue the Church, she had violated the Hosanna church rule that all "ministers" must work with the congregation to achieve consensus on major issues.

In its ruling, the Court accepted the importance of working in consensus within the Church. It also agreed that, according to their doctrine, Perich was (by virtue of her calling) a minister, not a lay employee, even though other teachers in the school were lay employees. They therefore concluded her termination was within the Church's rights. The Court pointed out, however, that their decision does not necessarily bar other types of lawsuits by a minister, such as for breach of contract

or injury.

## Minister: Implications of the Term

In my opinion, the most interesting aspect of this case is the concurring opinion of Justices Alito and Kagan who recognized that many religions in the US do not call their leaders "ministers." They wrote:

The term minister is commonly used by many Protestant denominations to refer to members of their clergy, but the term is rarely if ever used in this way by Catholics, Jews, Muslims, Hindus or Buddhists. In addition, the concept of ordination as understood by most Christian churches and by Judaism has no clear counterpart in some Christian denominations and some other religions. Because virtually every religion in the world is represented in the population of the United States, it would be a mistake if the term minister or the concept of ordination were viewed as central to the important issue of religious autonomy that is presented in cases like this one. Instead, courts should focus on the function performed by persons who work for religious bodies.

The First Amendment protects the freedom of religious groups to engage in certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith. Accordingly, religious groups must be free to choose the personnel who are essential to the performance of these functions.

The "ministerial" exception should be tailored to this purpose. It should apply to any "employee" who leads a religious organization, conducts worship services [clearly including Hindu priests] or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith. If a religious group believes that the ability of such an employee to perform these key functions has been compromised, then the constitutional guarantee of religious freedom protects the group's right to remove the employee from his or her position.

What matters in the present case is that Hosanna-Tabor [Church] believes that the religious function that respondent [Perich] performed made it essential that she abide by the doctrine of internal dispute resolution; and the civil courts are in no position to second-guess that assessment. This conclusion rests not on

respondent's ordination status or her formal title, but rather on her functional status as the type of employee that a church must be free to appoint or dismiss in order to exercise the religious liberty that the First Amendment guarantees.

## Applicability to Our Hindu World

I have personally helped Hindu groups form legal organizations, and assisted with contentious issues between temple managements and their priests. In some respects, the Hosanna decision leaves priests with fewer options in dealing with unfair decisions by a temple board regarding their employment. I would, however, appeal for a more enlightened handling of our temple priests, who, as this decision makes clear, are rightly regarded as ministers.

First, I have always admired the wisdom of Satguru Sivaya Subramuniyaswami, founder of this magazine Hinduism Today, in implementing a policy of decision making by consensus, not much different from that of the Hosanna Church: "My devotees abide by consensualocracy. All involved in a decision must unanimously agree and obtain the guru's blessings before proceeding. No votes are taken based on the majority superseding the minority."

Second, Subramuniyaswami advocated, and I strongly support, the principle that Hindu temples in the US should put themselves under the guidance of a guru or religious leader of their tradition, specifically in times when they are unable to reach consensus on how to proceed.

In the US, the majority of temple property is owned and operated by a nonprofit corporation governed by a board of directors, usually consisting of successful local business people and professionals. Unfortunately, most Hindu temple organizations are not under the direct guidance of a religious leader. For various historical and cultural reasons, temple boards tend to have only modest respect for the priests in their employ. In contrast, in US Christian churches, the priest or minister is held in high regard and is a rightfully respected, influential member of the community.

Rather than take the Hosanna decision as an opportunity to deal less fairly with our priests, I advocate we take this moment to examine our temple management paradigm. Based upon years of experience, I believe that the most enlightened solution for any Hindu temple organization is to seek the guidance of a religious

leader associated with the temple's philosophic orientation. His or her guidance may then be sought when encountering thorny issues dealing with priests, and decisions made in keeping with dharma for the betterment of the community.

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