The Business Committee of the Thirty-Third General Synod has recommended this proposed resolution be sent directly to the United Church of Christ Board for consideration.

A RESOLUTION ON PROTECTING WORKERS AT CHURCHES AND OTHER RELIGIOUS INSTITUTIONS

A Resolution of Witness

Submitted by the Central Atlantic Conference of the United Church of Christ, and the New Jersey Association of the Central Atlantic Conference

SUMMARY

This resolution invites United Church of Christ settings to discern and implement appropriate measures to protect their employees, and to be attentive to the ways that religious freedom, including the ministerial exception defense to legal claims of discrimination, gives churches and religious institutions wide latitude in decisions impacting their employees.

BIBLICAL, THEOLOGICAL, AND ETHICAL RATIONALE

God calls us into the church to accept the cost and joy of discipleship, to be God’s servants to our neighbors, and to proclaim good news, dwelling in the promises of forgiveness of sins and fullness of grace, and taking courage in striving for justice and peace. In response to our common calling, United Church of Christ members have supported the expansion of rights and recognition for historically marginalized communities in our society. At the national level, these efforts include advocacy for the Civil Rights Act, for immigrant farmworkers, for redress and reparations for Japanese-Americans interned during World War Two, for communities fighting environmental racism, for the Americans with Disabilities Act, and for the Family and Medical Leave Act, among many others.

Freedom of religion is a cornerstone of American society, and United Church of Christ members and institutions are mindful that our voice in advocating for change is “one among many”; we communicate our witness in the spirit of offering, aware that our advocacy is empowered by our ability to live into the values we promote. Because of the separation of church and state, the United States has become a religious pluralism and the United Church of Christ rejoices in the religious diversity of our neighbors.

The First Amendment celebrates individual conscience by guaranteeing the free exercise of religion. In accordance with the First Amendment, the Supreme Court has repeatedly upheld expansive protections for the free exercise of religion. Under the rubric of limiting government involvement with religious organizations, the Supreme Court has also held that religious institutions have broad authority to manage their own internal affairs.

With such freedom comes great responsibility. “For, dear brethren, you have been given freedom: not freedom to do wrong, but freedom to love and serve each other.” The United Church of Christ values religious freedom, and recognizes the moral responsibility that comes with it. Seeking to create justice and peace within our own institutions, our faith calls us to great care in the exercise of our freedom of conscience.
HISTORICAL GROUNDING

The treatment of employees is a critical area of church autonomy. In 2012 the Supreme Court, following lower courts, recognized the ministerial exception which exempts religious institutions from legal liability for many if not all discrimination claims filed by ministers.\(^{17}\) This exception applies to the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act, and state-law equivalents. These laws generally protect employees from being fired, from being paid less for the same work,\(^ {18}\) and from being sexually harassed or harassed on the basis of any other protected category. These laws also protect those who advocate against discrimination in the workplace from retaliation.

When a church or other religious institution faces a discrimination lawsuit by a ministerial employee, it may invoke the ministerial exception to dismiss the lawsuit.\(^ {19}\) Thus, the ministerial exception is primarily a legal defense.\(^ {20}\) Using the ministerial exception as a defense is also an ethical decision with moral implications, especially for a church tradition that fights for inclusion and civil rights. Churches and religious institutions can promote diversity by specifically seeking candidates of particular underrepresented backgrounds for ministerial positions, because if these practices are challenged as discriminatory, they may use the ministerial exception in their defense.

In 2020, the Supreme Court expanded the scope of the ministerial exception to include employees with duties that can be considered religious and in furtherance of the institution’s religious mission, even if they do not exercise positions of leadership or have special training or credentials: the exception now applies to “any employee who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.”\(^ {21}\) The religious institution’s own definitions of its religious purposes will be accorded considerable deference by the courts.\(^ {22}\) This applies to all religious and religious-affiliated institutions including nursing homes, hospitals,\(^ {23}\) and schools.\(^ {24}\) For example, secular teachers at a religious-affiliated school can be considered ministers if they open the day with required prayers, attend school-wide worship, and occasionally prepare students for other religious activities;\(^ {25}\) and therefore they do not have legal protections against discrimination.\(^ {26}\)

This dissenting opinion of Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, highlights the vast ethical implications behind this freedom and responsibility that has been given to religious institutions:

Two employers fired their employees allegedly because one had breast cancer and the other was elderly. Purporting to rely on this Court’s decision in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, the majority shields those employers from disability and age-discrimination claims. In the Court’s view, because the employees taught short religion modules at Catholic elementary schools, they were “ministers” of the Catholic faith and thus could be fired for any reason, whether religious or nonreligious, benign or bigoted, without legal recourse. The Court reaches this result even though the teachers taught primarily secular subjects, lacked substantial religious titles and training, and were not even required to be Catholic.\(^ {27}\)
At churches and religious institutions throughout the country, more than one hundred thousand people who have been hired into non-clergy positions with the understanding that anti-discrimination legal protections would apply, may learn that they are “ministers” for purposes of the ministerial exception, and therefore legally subject to discrimination.28

TEXT OF THE MOTION

WHEREAS the exercise of religious freedom that churches have in charting their own employment practices calls for great intentionality in protecting workers;

WHEREAS speaking in the context of religious employment, St. Paul wrote in his first letter to the Corinthians: “we have not made use of this right, but we endure anything rather than put an obstacle in the way of the gospel of Christ;”29

WHEREAS religious freedom allows churches wide latitude in managing policies and staff, yet the ethical commitments to love our neighbors and serve the most vulnerable, require us to inhabit the world of the marginalized and understand how the law speaks differently to those who have the law enacted upon them;30

WHEREAS given that the law of religious freedom opens a broad gateway for religious institutions to choose their own policies, churches must strive to follow the high standard of righteousness that is our calling;31

WHEREAS protecting employees can come in many forms, and churches and religious organizations can identify the forms of discrimination that their faith prohibits and, in consultation with experts, develop anti-discrimination policies that flow from that process;

WHEREAS churches can develop personnel policies that meaningfully protect workers and implement alternative resolution processes;

WHEREAS having the legal power to utilize the ministerial exception to preclude the discrimination claims of those who work in our institutions does not always mean that churches must use it, for example, churches may be able to clarify before hiring or before a lawsuit arises which positions do not advance core religious functions and are thus not ministerial for purposes of the ministerial exception;

NOW THEREFORE BE IT RESOLVED that the Thirty-Third General Synod of the United Church of Christ encourages each Conference, each Association, each Local Church, each Affiliated and Associated Ministry, and each affiliated and historically affiliated organization, to study the privileges afforded to churches and religious institutions through the First Amendment including the ministerial exception;

BE IT FURTHER RESOLVED that the Thirty-Third General Synod invites all settings of the church and affiliated ministries to discern the extent and nature of ethical protections for their employees consistent with their understanding of Christian faith and teaching and to implement those measures that they deem appropriate;
BE IT FINALLY RESOLVED that the national setting of the United Church of Christ send
the text of this Resolution to Local Churches, Associations and Conferences.

FUNDING: The funding for the implementation of the resolution will be made in
accordance with the overall mandates of the affected agencies and the funds available.

IMPLEMENTATION: The Officers of the Church, in consultation with appropriate
ministries or other entities within the United Church of Christ, will determine the
implementing body.

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1 United Church of Christ Statement of Faith
2 “Civil Rights and Demonstrative Religion”, Christianity Today, April 10, 1964,
3 General Synod Resolution in Support of United Farm Workers (General Synod 12 1979);
4 General Synod Resolution on Redress/Reparation to Japanese Americans (GS13 1981)
5 General Synod Resolution on Environmental Racism in East St. Louis, Illinois (GS19 1993),
   https://www.ucc.org/a_movement_is_born_environmental_justice_and_the_ucc.
6 “A Man Who Helped Us Think Differently about Disabilities”
7 The Family and Medical Leave Act of 1993: Hearing on S. 5 Before the Subcommittee on Children, Family,
   Drugs & Alcoholism of the Senate Committee on Labor and Human Resources, 103 Cong. 44 (1993) (list of
   endorsing organizations)
   (https://books.google.com/books?id=QUYJ0xfG21IMC&printsec=frontcover&source=gbs_ge_summary_r&cad
   =0#v=onepage&q&f=false).
8 The U.C.C. Office of Communications, “OC Inc.”, fought for the rights of individuals to have a say in Federal
   Communications Commission proceedings. The legal right of all citizens to participate in FCC proceedings was
   the result of advocacy by Rev. Parker and OC Inc.
9 “E pluribus unum”
10 https://www.ucc.org/ecumenical_interfaith-relations.
15 Gal. 5:13.
16 General Synod Resolution Affirming and Supporting the Authorized Ministries of Under-represented Clergy
   in Local Congregations: A Call for Greater Representation and Economic Justice (GS31 2017); General Synod
   Resolution Calling the United Church of Christ to be an Anti-racist Church (GS24 2003); see also Auburn
   at: https://lawrightsreligion.law.columbia.edu/content/all-faiths-and-none).
17 Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission,
   565 U.S. 171 (2012). The lower courts are divided on whether hostile work environment claims are also
   excluded through the ministerial exception, and the Supreme Court has not yet addressed this question.
18 Deuteronomy 24:15: “You shall pay them their wages daily, before sunset…”; Lilly Ledbetter Fair Pay Act of
   2009 (which amended the Civil Rights Act to strengthen enforcement of the equal pay for equal work
   provision).
19 The church’s basis for discriminating does not need to have any relationship with its religious beliefs. The
discrimination can be motivated purely by sexism, racism, ageism or homophobia – or it can be motivated by a
desire to save money, by discharging sick employees.
20 There are also some courts that decline to hear discrimination claims on the basis that the court does not have
jurisdiction.
Justice Samuel Alito’s concurring opinion in Hosanna-Tabor, the 2012 case (p. 199).
Our Lady of Guadalupe, p. 2066; as stated by Justice Sonia Sotomayor in her dissenting opinion: “In foreclosing the teachers’ claims, the Court…collapses [the determination of who is a minister] into a single consideration: whether a church thinks its employees play an important religious role. Because that simplistic approach has no basis in law and strips thousands of schoolteachers of their legal protections, I respectfully dissent.” (p. 2072).

The ministerial exception might even apply for institutions that used to have a religious affiliation that has since been severed (Penn v. New York Methodist Hospital, 884 F.3d 416 (2d Cir. 2018)).

Justice Sotomayor’s dissent cautioned the new definition may encompass all “coaches, camp counselors, nurses, social-service workers, in- house lawyers, and media-relations personnel” in churches and other religious institutions. P. 2082.

In Our Lady of Guadalupe, the Supreme Court held there is no legal recourse for Catholic school teachers fired on account of their age or because of having cancer (or any other legally protected category), so long as their employers show that the teachers had religious responsibilities and that these responsibilities were important to the religious mission of the school. A “friend-of-the-court” brief in support of the teachers, arguing that the ministerial exception should not apply to them, was submitted by 70 civil rights organizations including the American Association of People with Disabilities, the American Federation of Teachers, the Center for Constitutional Rights, the Human Rights Campaign, and the National Organization for Women Foundation. https://civilrights.org/edfund/2020/03/11/70-civil-rights-groups-urge-supreme-court-to-protect-rights-of-workers-at-risk-of-discrimination/.

Dissent of Justice Sotomayor, p. 2071-2072.

See Dissent of Justice Sotomayor, p. 2082.

1 Cor. 9: 12.


“...To whomever much is given, will much be required; and to whom much was entrusted, more will be asked.” – Luke 12:48. “With great power there must also come -- great responsibility.” See also Marvel Comics, Amazing Fantasy #15 (1962).