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3 Docket No. 12-305  
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6 SUPREME COURT OF THE UNITED STATES  
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8 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,  
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10 Petitioner,  
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12 v.  
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14 MUSEUM OF RELIGIOUS TOLERANCE,  
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16 Respondent.  
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18 ON APPEAL FROM  
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20 THE UNITED STATES COURT OF APPEALS  
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22 FOR THE NINTH CIRCUIT  
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24 RECORD ON APPEAL  
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1           The following documents comprise the Record in the case of Equal Employment  
2 Opportunity Commission v. Museum of Religious Tolerance, an appeal from the United States  
3 Court of Appeals for the Ninth Circuit, Ninth Circuit Case No. 11-2035:  
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- 5           (1)    August 30, 2011 District Court Order Granting Motion to Dismiss; and  
6           (2)    December 9, 2011 Ninth Circuit Opinion.  
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**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

|                                |   |                                   |
|--------------------------------|---|-----------------------------------|
|                                | ) | Case No. CV 11-5178 NNM           |
|                                | ) |                                   |
| EQUAL EMPLOYMENT OPPORTUNITY   | ) | <i>Hon. Nancy McGinnis</i>        |
| COMMISSION,                    | ) |                                   |
|                                | ) | <b>ORDER GRANTING DEFENDANT’S</b> |
| Plaintiff,                     | ) | <b>MOTION TO DISMISS</b>          |
|                                | ) |                                   |
| v.                             | ) |                                   |
|                                | ) |                                   |
| MUSEUM OF RELIGIOUS TOLERANCE, | ) |                                   |
|                                | ) |                                   |
| Defendant.                     | ) |                                   |
| _____                          | ) |                                   |

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2 Before the Court is Defendant Museum of Religious Tolerance's (the "Museum") Motion  
3 to Dismiss under Federal Rule of Civil Procedure 12(b)(6). The Court held a hearing on the  
4 motion, which it converted to a motion for summary judgment. After thoroughly reviewing the  
5 parties' evidence and legal arguments, the Court hereby GRANTS Defendant's Motion to  
6 Dismiss.

### 7 FINDINGS OF FACT

8  
9 1. Mary Donovan ("Donovan") is a member of the League of Saints religion. She  
10 grew up in Bakersfield, California, and converted to the League of Saints after encountering  
11 League of Saints members preaching on the streets.

12 2. The League of Saints is a Christian denomination that was founded during the  
13 nineteenth century in North America. It has since spread throughout the world. Members tend  
14 to be very devout. They believe in God, but they do not believe in the Trinity, which  
15 distinguishes them from other Christian denominations. League of Saints members believe that  
16 Armageddon—the destruction of the present world system—is imminent and that the  
17 establishment of God's kingdom on earth is the only solution for all problems faced by  
18 humankind. To help establish God's kingdom on earth, they actively preach their religion  
19 within their communities and strive to do good deeds. They believe that, after they die, God will  
20 resurrect their souls to a cleansed earth after Armageddon.

21 3. All members of the League of Saints religion, including Donovan, are considered to  
22 be ministers, based on an interpretation of the Bible that all members must share in God's work  
23 to reach and save as many people as possible. There is no formal ordination process to become  
24 a minister, nor did Donovan receive any special training or education to become a minister. As  
25 a member of the League of Saints congregation, however, she is under a Biblical command to  
26 engage in public preaching and to devote as much time as possible to her ministry.

27 4. The League of Saints congregation has a body of appointed, unpaid male elders who  
28 govern individual congregations. The congregation believes that the elders have direct guidance

1 from God. The elders are responsible for setting up and conducting meetings for the  
2 congregants, selecting speakers for these meetings, directing the congregants' public preaching  
3 responsibilities, and creating "judicial committees" to investigate and decide disciplinary action  
4 for congregants who are considered in breach of the League of Saints doctrines. Individual  
5 congregations appoint new elders after receiving recommendations from the existing body of  
6 elders. In addition to elders, servants—who are appointed in a manner similar to elders—fulfill  
7 clerical and attendant duties, but may also teach and conduct meetings.

8         5. A small group of League of Saints congregants established the Museum of  
9 Religious Tolerance in Los Angeles in honor of League of Saints members persecuted by the  
10 Nazis during World War II. According to the Museum's bylaws, the purpose of the Museum is  
11 to educate the world about the Saints' persecution and to promote tolerance. The Articles of  
12 Incorporation also include a commitment to upholding the following Statement of Faith: "We  
13 believe that the destruction of the present world system at Armageddon is imminent and that the  
14 establishment of God's kingdom on earth is the only solution for all problems faced by  
15 humankind and for the end of our suffering."

16         6. The Museum's Board of Directors does not include any of the League of Saints  
17 elders, but the curator consults with elders regularly. All the Directors are League of Saints  
18 members.

19         7. The Museum is not formally affiliated with the League of Saints but receives  
20 donations from several League of Saints congregations.

21         8. The Museum organizes lectures and instructions, the majority of which have no  
22 religious content. Its activities are educational. The Museum is open to people of all  
23 religions—which it states on its pamphlets—and thus operates within the tradition of the League  
24 of Saints.

25         9. The Museum has a room in the back known as the Kingdom Hall that serves as a  
26 place for meetings of worship and study. None of the employees at the museum are required to  
27 attend the meetings of worship and study. Consistent with League of Saints doctrine, the  
28 Museum does not place religious logos on Museum stationery. Similarly, there are no religious

displays on the walls of the Kingdom Hall or in the Museum, with the exception of a large cross at the entrance of one of the exhibit rooms. The Museum does not reprint Biblical verse or scripture quotations on any internal or external correspondence, but the following Old Testament verse is printed on Museum tickets, receipts for items purchased from the Museum gift shop, and the paper bags provided to carry such items: “Micah 4:3: Nation will no longer fight against nation, nor train for war anymore.”

10. The Museum is closed on the major League of Saints Holy Day known as the “Memorial of Christ’s Death,” which generally falls on the same date as the Jewish Passover.

11. The Museum houses a small gift shop. According to the Museum’s bylaws, both the Museum and the gift shop are 501(c)(3) not-for-profit organizations.

12. The Museum bylaws state that “the Gift Shop, located in the Museum, was originated by the Museum. Its purpose is to generate funds from the sale of articles and memorabilia appropriate to the mission of the Museum in fostering an education to the community and public visitors of the unique history of the League of Saints.”

13. The gift shop makes a profit that supports the Museum. However, the gift shop also operates and exclusively handles an online store selling League of Saints books online. The online store is a separate, for-profit company, which makes a significant profit. The profit from the online store is used to help the Museum defray some of its expenses. The Museum’s bylaws do not mention the for-profit company.

14. Donovan was an employee at the Museum’s gift shop. Her job was to sell books and symbols of the League of Saints persecution, such as the small inverted red triangles they were required to wear in concentration camps. In addition, Donovan, like the other employees at the gift shop, coordinated the shipping for book orders placed through the for-profit online store.

15. Employees at the gift shop sometimes volunteer as docents and answer visitors’ questions about the mass murder of Saints during World War II. Donovan has served as a docent on several occasions.

16. Donovan was not required to be a member of the League of Saints when she applied

1 to work at the Museum gift shop. However, she learned about the job opportunity from one of  
2 the League of Saints elders who told her that it would be a great place to live out her faith. She  
3 was required to fill out an online job application on a website linked to  
4 <http://www.leagueofsaints.org>, the League of Saints' official website. Other gift shop  
5 employees who perform the same duties as Donovan and other Museum employees are not  
6 members of the League of Saints congregation.

7 17. When customers stopped at the bookstore, Donovan often discussed her religion  
8 with them and made an effort to spread her beliefs. On one occasion during the two years she  
9 was employed at the Museum, she filled in for the curator who was absent and fulfilled her  
10 public preaching obligation by showing and explaining to children visiting the Museum some of  
11 the books at the gift shop, including My Book of Bible Stories, a well-known League of Saints  
12 publication geared toward young children. She included this experience in her individual  
13 monthly Field Service Report, which lists all the public preaching a Saint has done in a  
14 particular month.

15 18. The curator of the Museum claims a special housing allowance on her taxes, which  
16 is available only to employees earning their compensation "in the exercise of the ministry."  
17 Donovan never claimed such an allowance even though the curator of the Museum encouraged  
18 her to do so on several occasions.

19 19. The Museum is experiencing financial difficulties, and the relationships between the  
20 staff and the curator have become increasingly tense. In the last six months of Donovan's  
21 employment in the gift shop, the curator frequently reprimanded Donovan privately about her  
22 choice of clothing and flirting with male employees.

23 20. When the curator overheard a conversation between Donovan and another employee  
24 in which Donovan indicated she had accompanied her colleague to a bar, the curator fired  
25 Donovan. The curator told Donovan that it is particularly important for a woman to abide by the  
26 moral code of conduct of the League of Saints and that frequenting bars and other locales where  
27 individuals typically drink alcohol is a ground for expulsion from the League of Saints if the  
28 individual is not repentant. According to the curator, Donovan was not repentant and told the

1 curator she was free to interpret her religion as she pleased.

2 21. The curator also remarked that Donovan did not dress modestly and that her  
3 replacement would likely be male so as to avoid “these types of issues in the future.”

4 22. Donovan filed a complaint with the Equal Employment Opportunity Commission  
5 (“EEOC”) alleging that the Museum had discriminated against her on account of her religious  
6 beliefs and on the basis of sex in violation of Title VII of the Civil Rights Act. The EEOC  
7 investigated and subsequently filed the instant action on Donovan’s behalf against the Museum.

### 8 9 Conclusions of Law

10  
11 1. Under section 703(a) of Title VII, it is unlawful for an employer “to fail or refuse to  
12 hire or to discharge any individual, or otherwise to discriminate against any individual with  
13 respect to his compensation, terms, conditions, or privileges of employment, because of such  
14 individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(1). Title VII  
15 thus bars religious discrimination.

16 2. Pursuant to section 702(a), however, the bar against religious discrimination does  
17 not apply to “a religious corporation, association, educational institution, or society with respect  
18 to the employment of individuals of a particular religion to perform work connected with the  
19 carrying on by such corporation, association, educational institution, or society of its activities.”  
20 42 U.S.C. § 2000e–1(a).

21 3. Donovan was terminated for religious reasons, but her termination is permissible  
22 because the Museum is a religious organization within the meaning of 42 U.S.C. § 2000e–1(a)  
23 since it is “primarily religious” in nature, taking into account its religious and secular  
24 characteristics. *EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 618 (9th Cir. 1988). For  
25 example, the Museum is affiliated with the League of Saints congregation and the League of  
26 Saints’ articles of faith are included in its bylaws.

27 4. A nonprofit entity qualifies for protection under 42 U.S.C. § 2000e–1(a) if it  
28 establishes that (1) it “is organized for a self-identified religious purpose”; (2) “engaged in

activity consistent with, and in furtherance of, those religious purposes”; (3) “holds itself out to the public as religious; and (4) does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.” *Spencer v. World Vision*, 633 F.3d 723, 727–30 (9th Cir. 2010) (finding that non-profit relief organization was organized for religious purpose). The Museum and gift shop are non-profit organizations, and the Museum, of which the gift shop is an integral part, was founded by League of Saints members with an avowed religious purpose and the goal of educating the public about the religious persecution of its own members.

5. The First Amendment provides in relevant part that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” U.S. Const. amend. I.

6. While the statutory exception codified in Title VII permits a religious organization to discriminate based on an individual’s religious affiliations or preferences, the scope of the exception is narrow, and a religious employer can remain liable for discrimination on the basis of sex. However, the Free Exercise Clause and the Establishment Clause both bar the government from interfering with the decision of a religious group to fire one of its ministers. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694, 702 (2012). As a result of the First Amendment’s guarantees of religious freedom, courts have developed the ministerial exception, a separate judge-made exception grounded in the First Amendment that precludes application of the Title VII employment discrimination laws to claims involving an employment relationship between a religious organization and its ministers. *Id.* at 706. Requiring a religious organization to retain an unwanted minister “interferes with the internal governance of the [organization], depriving the [organization] of control over the selection of those who will personify its beliefs.” *Id.* The ministerial exception is thus an affirmative defense to a Title VII claim. *Id.* at 709 n.4.

7. The ministerial exception bars an employment discrimination claim when two factors are present: (1) The employer is a religious institution, and (2) the employee is a ministerial employee. *Id.* at 705–06.

8. The Museum is a religious organization for purposes of the ministerial exception for the same reasons it qualifies under the statutory exception for religious organizations. Specifically, the Museum possesses clear and obvious religious characteristics. *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 310 (4th Cir. 2004). In addition, Donovan qualifies as a minister within the meaning of the exception in light of the circumstances of her employment. Among other things, Donovan is a minister of the League of Saints congregation; actively proselytizes on behalf of the League of Saints, including to young children; and maintains a Field Service Report that documents her monthly public preaching.

For the foregoing reasons, the Court GRANTS Defendant Museum of Religious Tolerance's Motion to Dismiss and dismisses the above-entitled action with prejudice.

SO ORDERED.

Dated: August 30, 2011

/s/ *Nancy McGinnis*  
United States District Court Judge

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8 **UNITED STATES COURT OF APPEALS**  
9 **FOR THE NINTH CIRCUIT**  
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11 )  
12 EQUAL EMPLOYMENT OPPORTUNITY )  
13 COMMISSION, ) Case No. 11-2035  
14 )  
15 Appellant, )  
16 )  
17 v. )  
18 ) **OPINION**  
19 MUSEUM OF RELIGIOUS TOLERANCE, )  
20 )  
21 Appellee. ) December 9, 2011  
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Before AMY B. LEVIN, MIREILLE P. BUTLER, and HILARY S. REED, Circuit Judges.

Opinion by Judge LEVIN; dissent by Judge REED.

1 OPINION

2  
3 LEVIN, Circuit Judge:

4 For the reasons stated in United States District Court Judge McGinnis’s Order Granting  
5 the Museum of Religious Tolerance’s Motion to Dismiss, dated August 30, 2011, this Court  
6 affirms the decision of the District Court dismissing the above-entitled case with prejudice.

7  
8 REED, Circuit Judge, dissenting.

9 While I agree with the majority that religious organizations within the meaning of 42  
10 U.S.C. § 2000e–1(a) are beyond the reach of Title VII and that a ministerial exception rooted in  
11 the First Amendment exists, I respectfully dissent because I find the majority’s conclusions that  
12 the Museum of Religious Tolerance (the “Museum”) is a religious organization and that  
13 Donovan is a minister within the meaning of the ministerial exception to be in error.

14 In weighing the Museum’s religious and secular characteristics to determine whether the  
15 organization’s purpose and character is “primarily religious,” as we must under our prior  
16 decisions in *Spencer v. World Vision, Inc.*, 633 F.3d 723, 729 (9th Cir. 2010), *EEOC v.*  
17 *Kamehameha Schools/Bishop Estate*, 990 F.2d 458, 460 (9th Cir. 1993), and *EEOC v. Townley*  
18 *Engineering & Manufacturing Co.*, 859 F.2d 610, 618 (9th Cir. 1988), I believe the Museum is  
19 essentially a secular organization, the mission of which is to recognize the genocide of League  
20 of Saints members by the Nazis during World War II and to preserve their memory just as the  
21 Holocaust Museum and the Museum of Tolerance, both considered secular institutions, do.  
22 Indeed, even though the Museum is affiliated with the League of Saints congregation, the  
23 avowed purpose of the Museum is to educate the public regarding the persecution of the Saints  
24 and to promote tolerance. Moreover, the Museum does not utilize any religious logos in its  
25 internal or external communications and promotions, and operates a for-profit online book store,  
26 suggesting its mission and goals are primarily secular, not religious. *See Townley*, 859 F.2d at  
27 618 (holding that a for-profit corporation that produced mining equipment was not a religious  
28 organization despite strong religious beliefs of owners that “the conduct of their company [was]

1 subject to a compact with God”). Moreover, unlike the Hebrew Home in *Shaliehsasbou v.*  
2 *Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299, 310 (4th Cir. 2004), the Museum  
3 bylaws do not define the Museum as a religious non-profit corporation, but rather its declared  
4 mission “is to educate the world about the Saints’ persecution and to promote tolerance.”

5 In addition, although Donovan is a League of Saints “minister,” all members of the  
6 League of Saints congregation are ministers, unlike in *Hosanna-Tabor Evangelical Lutheran*  
7 *Church & School v. EEOC*, 132 S. Ct. 694, 707 (2012), where the plaintiff received a significant  
8 amount of religious training, received a ““diploma of vocation”” according her the title of a  
9 commissioned minister, and had a religious role distinct from most of Hosanna Tabor’s other  
10 members. Furthermore, Donovan has not claimed the housing allowance given to League of  
11 Saints members as the Museum’s curator and the plaintiff in *Hosanna-Tabor* did. *Id.* at 708.  
12 Given all the circumstances of Donovan’s employment in the Museum’s gift shop, in my  
13 opinion, she is simply not a minister and should not be barred from asserting a Title VII claim  
14 against the Museum.

15 I would reverse the District Court’s granting of the Museum’s Motion to Dismiss and  
16 allow Donovan to pursue her employment discrimination claims against the Museum. I  
17 therefore respectfully dissent.