

## **OFFICE MEMORANDUM**

TO: First Year Associate  
FROM: Lead Counsel  
RE: Equal Emp't Opportunity Comm'n v. Museum of Religious Tolerance, U.S. Supreme Court Docket Number 12-305  
DATE: February 24, 2012

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In this federal action, the Equal Employment Opportunity Commission ("EEOC") filed suit in the District Court for the Central District of California against the Museum of Religious Tolerance (the "Museum") on behalf of Mary Donovan ("Donovan"), a former employee at the Museum gift shop. The EEOC alleged that the Museum's curator, acting on behalf of the Museum, engaged in religious and sex discrimination in violation Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a)(1), when she fired Donovan. The curator is not a party to this action; the only relevant claims are against the Museum itself.

The Museum filed a motion to dismiss in District Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), in which it raised defenses to Donovan's Title VII claims. Specifically, the Museum argued that:

- (1) The Museum is a religious institution and thus immune from liability for religious discrimination under Section 702(a) of Title VII, 42 U.S.C. § 2000e-1(a) (which expressly exempts religious institutions from liability under the statute with respect to religious discrimination claims) and immune from liability for both religious and sex discrimination under the judge-made ministerial exception to Title VII claims; and
- (2) Donovan is a minister within the meaning of the second prong of the ministerial exception and thus precluded from asserting Title VII claims against the Museum.

The District Court granted the Museum's motion to dismiss in an order dated August 30, 2011, and the EEOC appealed to the Ninth Circuit Court of Appeals. The EEOC argued that the Museum is not a religious institution under the Title VII exemption or the ministerial exception and, even if it were, Donovan is not a minister, so the ministerial exception does not bar her Title VII claims against the Museum. On December 9, 2011, the Ninth Circuit affirmed the District Court's order for the reasons stated therein. Judge Reed filed a dissenting opinion.

The EEOC then filed a Petition for Certiorari with the United States Supreme Court on December 23, 2011. The Supreme Court issued a Writ of Certiorari on January 23, 2012, agreeing to hear the case during its upcoming October 2012 term.

Please review the Record on Appeal, including (1) the District Court's August 30, 2011 Order Granting the Museum's Motion to Dismiss and (2) the Ninth Circuit's December 9, 2011 Opinion, and prepare your client's opening brief to the United States Supreme Court. Your brief should address the two issues the Museum raised in its motion to dismiss—whether the Museum is a religious institution within the meaning of Title VII and the ministerial exception and whether Donovan qualifies as a minister for purposes of the ministerial exception. In researching and drafting your argument, please limit yourself to these two issues.

Keep in mind that, because this case will require the United States Supreme Court to decide as an issue of first impression what constitutes a religious institution for purposes of Title VII and what constitutes a religious institution for the purposes of the ministerial exception, you should address and explain compelling precedent from the various federal courts. More specifically, you should advocate for (1) the rule(s) of law that the Supreme Court should apply to this issue and (2) explain why the application of such laws to the underlying facts should lead the Supreme Court to rule in your client's favor. In addition, be sure to address existing Supreme Court precedent on what qualifies an employee as a minister for purposes of the ministerial exception. Because the Supreme Court's opinion is limited in scope, you will also need to discuss other federal case law on this issue and apply it to the facts of this case. Which cases and how many you discuss is up to you.

Because we need several months to finalize the brief and prepare for oral argument, I need to receive the final draft of your brief no later than 1:00 p.m. on Thursday, March 15, 2012. Thanks in advance for your work on this important project.