

Wiley Rein Receives "Brief of the Week" Honors for Pro Bono Work on Closely Watched Supreme Court Case

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The National Law Journal's Supreme Court Insider granted "Brief of the Week" honors to the *amicus curiae* brief filed by Wiley Rein Appellate and Litigation partner Megan L. Brown in the pending Supreme Court case *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. Associates Justin D. Heminger and Michael Connolly joined Ms. Brown in drafting the brief. The firm represents religious tribunal experts – Presbyterian minister William Chapman, Catholic canon law scholar Edward Peters, United Methodist Church general counsel Richard Rettberg, and Rabbi and Jewish law expert Ronald Warburg – in "one of the most important church-state cases in years."

At issue in *Hosanna-Tabor* is the "ministerial exception" which, in certain circumstances, shields religious organizations' employment and internal decision-making from undue intrusion through the application of federal civil rights laws that may result in courts second guessing decisions about who leads the organization and promotes the faith. The case before the Court involves a Missouri Synod Lutheran school teacher who taught secular and religious classes to elementary school students and was terminated following the onset of a disabling illness. The U.S. Court of Appeals for the 6th Circuit found that the ministerial exception did not prevent her lawsuit under the Americans With Disabilities Act because the teacher spent more than six hours of her seven-hour day instructing on secular subjects.

This case is important because it will interpret and apply the ministerial exception, something the Supreme Court has not yet done. The amicus brief seeks to inform the Court about the tribunals of a variety of religious traditions, in order to provide the Court adequate

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context to evaluate the proper scope and applicability of the ministerial exception. Ms. Brown explained in the brief that "The First Amendment requires civil courts to show due regard for the decisions of these religious courts as unique expressions of the beliefs and values of the faiths they represent."

NLJ writes that Ms. Brown's brief "details how several U.S. religions resolve disputes internally 'as integral parts of their faith missions,' also incorporating principles of fairness and due process." The brief provides insight into "the Judicial Council of the United Methodist Church, the extensive judicial system of the Presbyterian Church, the canon law regime of the Roman Catholic Church, the decentralized both din tribunals of Judaism, and the formal processes of the Episcopal Church, which until recently embraced the Federal Rules of Evidence."

"Whether characterized by formal or informal processes," Ms. Brown writes in the brief, "the work of these tribunals is imbued with the unique values and judgments of the belief systems they support and enforce."

"I hope that after reading the brief, the justices and clerks feel that they learned something new as well," Ms. Brown told *NLJ*. "The Court has not had a core religious freedom case in a while and this case raises some basic questions about the relationship between federal statutory rights and organizations' constitutional rights, so we felt this was an important case to be involved in."

Oral arguments in *Hosanna-Tabor v. EEOC* will be heard at the Supreme Court on October 5.