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**June 20, 2024**

**On foundational matters**:
1. The distinction between church autonomy claims, Free Exercise Clause claims, and Establishment Clause claims; illustrated by *Does v. Regents of U. of Colo.*, 2024 WL 2012317 (10th Cir. May 7, 2024).
2. The five subject matters comprising church autonomy cases: religious questions and disputes; sacred spaces and rituals; polity; employment of ministers; and issues over membership.
3. While modest in scope, when it applies church autonomy is a powerful categorical immunity. It is structural in nature. That said, it is not jurisdictional (*Hosanna-Tabor* n.4) in the sense of a federal court's subject-matter jurisdiction as constrained in Art. III of the U.S. Const.

**On a few recent developments**:
1. Section 6(b) of the Respect for Marriage Act (codified as a note to 1 U.S.C. § 7) grants a right to churches and other religious nonprofits to refuse the use of its sanctuary or similar facility for the solemnization or celebration of a same-sex marriage. The RMA was bipartisan legislation (P. L. 117-228, 136 Stat. 2305) enacted on Dec. 13, 2022. The congressional authority to enact § 6(b), binding on state and local governments, is sec. 5 of the Fourteenth Amendment incorporating the First Amendment with its safeguards for church autonomy. Laycock, Berg, Esbeck & Fretwell, *The Respect for Marriage Act: Living Together Despite Our Deepest Differences*, 2024 U. OF ILL. L. REV. 511, 537-42 (2024).

2. Recent Dept. of Education Title IX regulations (89 Fed. Reg. 33474, 33534-36 (April 29, 2024)) provide that the prohibition on sex discrimination in the operations and programs of educational institutions of higher education extend to off-campus facilities of university-recognized student organizations, including religious organizations. *See* 34 CFR 106.11. This includes the organization's student meeting spaces, student housing, locker rooms, and restrooms. "Sex" as a protected class now includes sexual orientation and gender identity, and sex discrimination includes harassment and hostile environments.[1]

3. Wage & Hour requirements in the Fair Labor Standards Act (minimum salaries for exempt employees; time and a half for hourly employees) are binding on religious employers. However, the requirements do not apply to employees who are functionally ministers because of the church autonomy doctrine. A recent Opinion Letter by the Wage & Hour Division, U.S. Department of Labor, had little trouble applying the ministerial exception to teachers at a religious preschool thereby shielding the school from the minimum salary strictures of the FLSA. *See* U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter FLSA2021-2 (Jan. 8, 2021), *available at* https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2021_01_08_02_FLSA.pdf. This commonsense approach to who is functionally a "minister" suggests asking questions about whether the employee must perform duties that further the employer's theological beliefs, standards, or practices; if staff duties entail conveying the employer's message or carrying out its mission; if the job entails selecting or creating religious content; or if one job task is leading others toward greater maturity in the employer's religion.

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[1] State universities have sometimes sought to tell student religious organizations that they cannot require religious criteria for their student leaders. In the opinion of DOEd, the "ministerial exception" does not apply in such situations because there is no employment relationship. 89 Fed. Reg. at 33534 n.22. The DOEd is mistaken, however, to regard the church autonomy defense in such cases as one entailing employment. Rather, the dispute with the university is over organizational polity. Every religious organization gets to organize itself as it wants, including naming the organization's officers and specifying their qualifications.