

13. 534 U.S. 279 (2002).
 14. *Circuit City Stores, Inc. v. Adams*, 535 U.S. 1112 (2002).
 15. *Pollard v. E.I. duPont de Nemours & Co.*, 532 U.S. 843 (2001).
 16. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).
 17. 490 U.S. 642 (1989).
 18. 487 U.S. 997 (1988).

- Case 1. *Petruska v. Gannon University* 107
 Case 2. *McDonnell Douglas Corp. v. Green* 109
 Case 3. *Wilson v. Southwest Airlines Company* 110
 Case 4. *Griggs v. Duke Power Co.* 112
 Case 5. *Connecticut v. Teal* 113
 Case 6. *Ali v. Mount Sinai Hospital* 114



Petruska v. Gannon University 350 F. Supp. 2d 666 (W.D. Pa. 2004)

Employee, the chaplain of a Catholic university, sued for gender-based employment discrimination in violation of, among other things, Title VII. The court dismissed the action, saying that the university, as a religious institution, was not subject to Title VII.

McLaughlin, J.

Memorandum Opinion

Gannon University is a private, Catholic, diocesan college established under the laws of the Commonwealth of Pennsylvania. Plaintiff employee was initially hired by Gannon as Director for the University's Center for Social Concerns and in considering and accepting this position, relied upon Gannon's self-representation as an equal opportunity employer that does not discriminate on the basis of, among other things, gender.

Following [Gannon's President] Rubino's resignation [after allegations of a sexual affair with a subordinate], Gannon engaged in a campaign to cover up Rubino's sexual misconduct. Employee was vocal in opposing this and other of the Administration's policies and procedures, which she viewed as discriminatory toward females. One

such policy was [Bishop of the Roman Catholic Diocese of Erie] Trautman's willingness to allow allegedly abusive clergy to remain on campus, including at least one former Gannon priest who had been removed because of sexual misconduct directed at students.

Employee also actively opposed the University's efforts, during the time that Rubino was coming under investigation for alleged sexual harassment of females, to limit the time frame within which victims of sexual harassment could file grievances. As Chair of the University's Institutional Integrity Committee, employee was instrumental in submitting a Middle States accreditation report which raised issues of gender-based inequality in the pay of Gannon's female employees and which was critical of the University's policies and procedures for addressing complaints of sexual harassment and other

forms of discrimination. Despite pressure from the University's administration, employee refused to change those portions of the report which were critical of the University.

Employee contends that, in retaliation for the foregoing conduct and because of her gender, she was discriminated against in the terms and conditions of her employment. Believing that she was about to be fired, employee served Gannon with two weeks notice of her resignation. Employee was advised the following day that her resignation was accepted effective immediately and that she was to pack her belongings and leave the campus. Her access to the campus and to students was strictly limited thereafter. Following employee's departure, her supervisor stated on several occasions to both students and staff that a female would not be considered to replace employee as Chaplain.

The University has moved to dismiss all claims on the ground that they are barred by the so-called "ministerial exception," which is frequently applied in employment discrimination cases involving religious institutions. The ministerial exception is rooted in the First Amendment which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Among the prerogatives protected by the Free Exercise Clause is the right of religious institutions to manage their internal affairs.

The Establishment Clause prohibits laws "respecting an establishment of religion." The Supreme Court held that a statute comports with the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an "excessive government entanglement with religion." Unconstitutional entanglement with religion may arise in situations "where a 'protracted legal process pit(s) church and state as adversaries,' and where the Government is placed in a position of choosing among 'competing religious visions.'"

It is only in the rarest of occasions—e.g., where there is a need to prevent the "gravest abuses, endangering paramount [state] interest"—that government-imposed limitations on the free exercise of religion can be upheld. The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern. Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection.

Application of Title VII to [the] case would necessarily involve an investigation and review of these practices which, in turn, would result in state interference in matters of church administration and government—"matters of a singular ecclesiastical concern"—and threaten the separation of church and state contemplated by the Establishment Clause. The ministerial exception "does not apply solely to the hiring and firing of ministers, but also relates to the broader relationship between an organized religious institution and its clergy." In fact, *any matters* "touching this relationship" are necessarily considered "as of prime ecclesiastical concern."

[It is not] significant that Gannon has not asserted a religious basis for the challenged employment actions, for "the focus under the ministerial exception is on the action taken [by the employer], not possible motives." Indeed, "the exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision." "The church need not, for example, proffer any religious justification for its decision, for the Free Exercise Clause 'protects the act of a decision rather than a motivation behind it.'"

We acknowledge employee's concerns that discrimination, in any form, should not be tolerated in civilized society. Employee passionately argues that tolerance of gender-based discrimination in the workplace has led to sexual exploitation and harassment, which turns women into objects. To allow these behaviors to go unregulated simply because they [sic] employer is a religious entity and the employee is claimed to be a minister is unjustified and perpetuates the very evils Congress sought to eliminate. It is hard to argue that certain conduct is even wrong when churches freely engage in it. This has a tremendous impact on establishing social norms. This Court is "mindful of the potential for abuse" which application of the ministerial exception can invite, "namely, the use of the First Amendment as a pretextual shield to protect otherwise prohibited employment decisions." But it bears reiterating that the ministerial exception is not without limits and therefore "does not insulate wholesale the religious employer from the operation of federal anti-discrimination statutes." For one, the exception does not apply to employment decisions concerning individuals with purely custodial or administrative functions. It has also been found inapplicable in the context of Title VII sexual harassment claims. The "saving grace lies in the recognition that courts consistently have subjected the personnel decisions of various religious organizations to statutory scrutiny where the duties of the employees were not of a religious nature." Moreover, the existence of the

ministerial exception does not derogate the profound state interest in "assuring equal employment opportunities for all, regardless of race, sex, or national origin." The exception simply recognizes that the "introduction of government standards to the selection of spiritual leaders would significantly, and perniciously, rearrange the relationship between church and state." Application of the exception thus manifests no more than the reality that a constitutional command cannot yield to even the noblest and most exigent of statutory mandates.

Based upon the foregoing reasons, the Defendants' motions to dismiss is GRANTED.

Case Questions

1. Do you agree with the court's decision? Explain.
2. As a manager in this situation, how do you think you would have handled the chaplain's complaints?
3. Given the power that religious organizations have under Title VII, how do you think employment discrimination concerns can be addressed in the religious workplace?

McDonnell Douglas Corp. v. Green 411 U.S. 792 (1973)

Green, an employee of McDonnell Douglas and a black civil rights activist, engaged with others in "disruptive and illegal activity" against his employer in the form of a traffic stall-in. The activity was done as part of Green's protest that his discharge from McDonnell Douglas was racially motivated, as were the firm's general hiring practices. McDonnell Douglas later rejected Green's reemployment application on the ground of the illegal conduct. Green sued, alleging race discrimination. The case is important because it is the first time the U.S. Supreme Court set forth how to prove a disparate treatment case under Title VII. In such cases the employee can use an inference of discrimination drawn from a set of inquiries the Court set forth.

Powell, J.

The critical issue before us concerns the order and allocation of proof in a private, nonclass action challenging employment discrimination. The language of Title VII makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens.

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. The facts necessarily will vary in individual cases, and the specification of the prima facie proof required from Green is not necessarily applicable to every respect to differing factual situations.

In the instant case, Green proved a prima facie case. McDonnell Douglas sought mechanics, Green's trade, and continued to do so after Green's rejection. McDonnell Douglas, moreover, does not dispute Green's qualifications and acknowledges that his past work performance in McDonnell Douglas' employ was "satisfactory."

The burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. We need not attempt to detail every matter which fairly could be recognized as a reasonable basis for a refusal to hire. Here McDonnell Douglas has assigned Green's participation in unlawful conduct against it as the cause for his rejection. We think that this suffices to discharge McDonnell Douglas' burden of proof at this stage and to meet Green's prima facie case of discrimination.

But the inquiry must not end here. While Title VII does not, without more, compel the rehiring of Green, neither does it permit McDonnell Douglas to use Green's conduct as a pretext for the sort of discrimination prohibited