

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

Hon. Patrick J. Duggan  
Case No. 2:07-cv-14124

HOSANNA TABOR EVANGELICAL LUTHERAN  
CHURCH AND SCHOOL

Defendant

and

CHERYL PERICH

Plaintiff/Intervenor

v

HOSANNA TABOR EVANGELICAL LUTHERAN  
CHURCH AND SCHOOL

Defendant

---

Omar Weaver  
Equal Employment Opportunity Commission  
Attorneys for Plaintiff  
865 Patrick V. McNamara Building  
477 Michigan Avenue  
(313) 226-3407

Deano C. Ware, P.C.  
Deano C. Ware (P65421)  
Attorneys for Defendant  
P.O. Box 40162  
Redford, Michigan 48240  
(313) 541-8433

VERCRUYSSSE MURRAY & CALZONE, P.C.  
James E. Roach (P51792)  
31780 Telegraph Road  
Suite 200  
Bingham Farms, Michigan 48025  
(248) 540-8019  
Jroach@vmclaw.com

---

**DEFENDANT HOSANNA TABOR EVANGELICAL LUTHERAN CHURCH AND  
SCHOOL'S ANSWER AND AFFIRMATIVE DEFENSES TO  
INTERVENING COMPLAINT OF PLAINTIFF/INTERVENOR CHERYL PERICH**

NOW COMES, Deano C. Ware, counsel for Defendant Hosanna Tabor Evangelical Lutheran Church and School and states as follows for its Answer and Affirmative Defenses to Plaintiff/Intervenor Cheryl Perich's Intervening complaint:

JURISDICTION AND VENUE

1. Denied. Defendant denies that this court has jurisdiction over this matter as Defendant denies that the complainant Cheryl Perich ("Perich") has a "disability" as that term is defined under Title I of the Americans with Disabilities Act of 1990 ("ADA"). Defendant further denies that this court has jurisdiction over this matter because Defendant neither admits nor denies that at all times relevant to this complaint, Defendant Hosanna Tabor was an employer covered under the ADA. Defendant further denies that this court has jurisdiction over this matter as Plaintiff has failed to attempt to conciliate this matter with Defendant in a good faith manner.

2. Admitted in part. Defendant only admits that Perich has a right to intervene in this action in order to pursue her claims under the Americans with Disabilities Act of 1990 ("ADA"). Defendant denies that Perich has a right to intervene in this action in order to add state claims under the Michigan Elliott Larsen Civil Rights Act that are time barred.

3. Admitted.

4. Denied as untrue. As Perich's state law claims are not so related to claims in this action that they form part of the same case or controversy, rather Perich's state law claims fail as a matter of law and are beyond the applicable statute of limitations governing the filing of such claims.

**STATEMENT OF FACTS**

5. Admitted in part. Defendant only admits that Perich began her service with

Defendant in 1999.

6. Neither admitted or denied as Defendant is without knowledge or information sufficient to form a belief about the truth of the information at this time to either admit or deny the allegation.
7. Neither admitted or denied as Defendant is without knowledge or information sufficient to form a belief about the truth of the information at this time to either admit or deny the allegation.
8. Denied as untrue because Plaintiff's allegation inaccurately states what was said, omits part of what was said, relies upon hearsay and is stated out of place and time.
9. Denied as untrue because Plaintiff's allegation either mischaracterizes the meeting that was held and the decision that was made at that meeting or refers to some other meeting of which Defendant has no knowledge.
10. Neither admitted or denied as Defendant is without knowledge or information sufficient to form a belief about the truth of the information at this time to either admit or deny the allegation.
11. Denied as untrue. Plaintiff's allegations are not factually accurate or are simply false.
12. Admitted in part. Admit only that a meeting took place on February 13, 2005. Plaintiff's other allegations as to what transpired at the meeting or what was said are not factually accurate or are simply false.
13. Denied as untrue. Plaintiff's allegations are hearsay and are not factually accurate or are simply false.
14. Denied as untrue. Plaintiff's allegations are hearsay and assign statements to a "Board" without identifying any specific member of the board who may

have made the statement or whether the statement was even made by someone who was actually a member of the board. Further, Plaintiff's allegations are factually inaccurate or simply false.

15. Neither admitted or denied as Defendant is without knowledge or information sufficient to form a belief about the truth of the information at this time to either admit or deny the allegation.

16. Denied that Perich "went to the school to report to work upon the expiration of her disability leave". Admit that Perich came to the school and caused a disturbance. Denied that Hoeft made any of the statements alleged as they are stated in the allegation. Admit that Perich was sent a letter that day based on her conduct that day at the school. Denied as to the contents of the letter as the actual letter speaks for itself.

17. Denied as untrue. Plaintiff's allegations are hearsay and are not factually accurate or are simply false. But upon information and belief, Perich never said anything about "asserting her legal rights against discrimination". Instead, upon information and belief, Ms. Perich simply indicated at some point in time in the course of these events that "she would sue" without stating for what or on what basis.

18. Denied as untrue. The letter, in part, notified Perich that a vote would be held to "rescind her call".

19. Denied. Defendant admits that a letter notifying Defendant that her "call" had been rescinded was dated April 10, 2005.

20. Admit in part. Defendant admits that Perich filed a charge with the EEOC. Defendant neither admits or denies the date that the charge was filed as Defendant is without knowledge or information sufficient to form a belief as to

the truth of the matter asserted.

21. Admitted

### **Count I**

#### **Retaliation In Violation of the Americans with Disabilities Act**

22. Defendant incorporates and realleges by reference the responses set forth in paragraphs 1 through 21.

23. Denied. Defendant Hosana Tabor denies that it was an “employer” as defined by the Act in general based on its number of employees and specifically as to Perich based on her “called” status.

24. Denied as untrue.

25. Denied.

26. Denied.

### **Count II**

#### **Retaliation In Violation of the Michigan’s Persons with Disabilities Civil Rights Act**

27. Defendant incorporates and realleges by reference the responses set forth in paragraphs 1 through 26.

28. Admitted in part. Denied in part. Defendant Hosana Tabor denies that it “employed” Perich as defined by the PDCRA based on her “called” status.

29. Neither admitted or denied as the allegation fails to allege an issue of fact and calls for a legal conclusion.

30. Denied.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendant respectfully request that Plaintiff/Intervenor, Cheryl

Perich's, prayer for relief be denied, her intervening complaint be dismissed with prejudice and that this court enter an order awarding Defendant its costs and attorney fees incurred in the defense of this matter.

Respectfully submitted,

**DEANO C. WARE, P.C.**

/s/Deano C. Ware  
Deano C. Ware (P65421)  
P.O. Box 40162  
Redford, Michigan 48240  
(313) 541-8433  
[attorneyware@msn.com](mailto:attorneyware@msn.com)

Dated: April 19, 2008

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, Hosanna Tabor Evangelical Lutheran Church and School, by and through its attorneys, Deano C. Ware, P.C., and by way of Affirmative Defenses, states that it will rely upon and insist in its defense and demand a reply hereto:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted under the ADA or the PDCRA because as a "called" minister, Plaintiff was not an "employee" as defined under the ADA or PDCRA and the cases interpreting same.
2. Plaintiff's ADA and PDCRA claims are barred by statute as Plaintiff has failed to comply with all the necessary requisites for filing a lawsuit under the Acts including but not limited to meaningful conciliation efforts.
3. Plaintiff's PDCRA claims are barred by the applicable statute of limitations and are time barred.
4. Plaintiff's claims are barred by a statute of repose as provided in the ADA and PDCRA.
5. Lack of Jurisdiction. This court lacks subject matter jurisdiction over this matter as Plaintiff's claims are not governed by the ADA.
6. Laches. Plaintiff's claims are barred in whole or part by the doctrine of laches.
7. Defendant's actions are covered in whole or part by the separation clause of the United States Constitution and ecclesiastical in nature such that this court is barred from ruling on them.
8. Failure to Mitigate. Plaintiff's claims are barred in whole or part by her failure to mitigate her damages as required by Act by refusing to take employment elsewhere in the synod or seeking employment during the pendency of this

action.

9. Defendant reserves the right to amend its affirmative defenses as further defenses become known through the course of discovery.

Respectfully submitted,

**DEANO C. WARE, P.C.**

/s/Deano C. Ware  
Deano C. Ware (P65421)  
P.O. Box 40162  
Redford, Michigan 48240  
(313) 541-8433  
[attorneyware@msn.com](mailto:attorneyware@msn.com)

Dated: April 19, 2008



RELIANCE UPON JURY DEMAND

NOW COMES the Defendant, Hosanna Tabor Evangelical Lutheran Church and School and hereby relies upon Plaintiff, EEOC's previously filed demand for jury trial in this matter.

Respectfully submitted,

**DEANO C. WARE, P.C.**

/s/Deano C. Ware  
Deano C. Ware (P65421)  
P.O. Box 40162  
Redford, Michigan 48240  
(313) 541-8433  
[attorneyware@msn.com](mailto:attorneyware@msn.com)

Dated: April 19, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following Omar Weaver, James Roach and I hereby certify I have mailed by United States Postal Service the document to the following non-ECF participants:

---

**DEANO C. WARE, P.C.**

/s/Deano C. Ware  
Deano C. Ware (P65421)  
P.O. Box 40162  
Redford, Michigan 48240  
(313) 541-8433  
[attorneyware@msn.com](mailto:attorneyware@msn.com)