**[In Chicago, a Renewed Alumni Effort to Seek Justice for Fired Gay Church Worker](https://www.newwaysministry.org/2019/05/08/in-chicago-a-renewed-alumni-effort-to-seek-justice-for-fired-gay-church-worker/%22%20%5Co%20%22Permanent%20Link%3A%20In%20Chicago%2C%20a%20Renewed%20Alumni%20Effort%20to%20Seek%20Justice%20for%20Fired%20Gay%20Church%20Worker)**

May 8, 2019/[1 Comment](https://www.newwaysministry.org/2019/05/08/in-chicago-a-renewed-alumni-effort-to-seek-justice-for-fired-gay-church-worker/#comments)/in [Employment Issues](https://www.newwaysministry.org/category/employment-issues/), [Schools & Youth](https://www.newwaysministry.org/category/schools-youth/) /by [Robert Shine, Managing Editor](https://www.newwaysministry.org/author/robert-shine/)

**

*Matt Tedeschi*

Alumni of a Chicago Catholic high school which [fired a gay teacher](https://www.newwaysministry.org/2017/05/19/gay-teacher-harassed-by-students-fired-by-jesuit-high-school/) two years ago have begun renewed efforts for justice after that teacher released an essay about his experiences last month.

Twenty seven alumni of St. Ignatius College Prep wrote a letter to school officials that revealed they were “outraged and disappointed” upon learning about the firing of Matt Tedeschi. The [*Chicago Sun Times*](https://chicago.suntimes.com/news/st-ignatius-alumni-gay-teacher-outed-fired/?fbclid=IwAR1w_YKuE19kO_u1G-qvM5_cGxc5jzz17MlAGLfjlm_HqWt44Bc3W2gDi-s) reported:

“‘It is shocking to learn that a gay teacher at St. Ignatius was subjected to harassment and bullying by a small group of students, and that the administration not only failed to defend Mr. Tedeschi, but instead turned around and protected his harassers, and then fired him,’ the group wrote.

“The alumni proposed a long list of changes and protections for LGBTQ faculty and students, including promoting LGBTQ student groups; adding sexual orientation and gender identity to its non-discrimination policy; allowing faculty to unionize; and removing and replacing the school’s president, vice president and principal.”

The alumni action came after Tedeschi, who used to teach religious studies and French, published an [essay](https://medium.com/%40MrTee/https-medium-com-my-time-as-a-teacher-at-st-ignatius-d596c8ee17d0) online in March that described his firing in greater detail. The *Sun Times*explained that the former teacher shared for the first time about an incident of sexual assault reporting that happened in the same time period he was fired:

“In Tedeschi’s essay last month, he revealed that he had been dismissed a few weeks after he told administrators of a situation in his class where a student publicly told him of the sexual assault of a girl by a fellow student.

“Students in Tedeschi’s class were upset about the firing of another teacher who was gay and felt there was a lack of transparency and accountability by school leaders, he wrote. That’s when one student told Tedeschi about the sexual assault and said it had been reported to administrators and nothing had been done about it.

“Tedeschi brought the report to the school principal, who said it was good he relayed the information quickly but became upset the teacher “allowed the discussion to go on at all,” he wrote.

“Tedeschi was fired days later with his handling of the report and his ‘poor judgment’ in making a dating profile given as the official reasons. Tedeschi, though, said he found out from an administrator that there were plans to terminate him solely because of the dating profile before the sexual assault was even reported. His firing came despite there being no written record of charges against him in his personnel file, which only contained positive performance reviews, he said.”

Controversy over the dating profile was known in 2017 when news of the firing broke. Tedeschi claimed at the time he had been [targeted by students](https://www.newwaysministry.org/2017/05/19/gay-teacher-harassed-by-students-fired-by-jesuit-high-school/) who found his profile online and who used it in a campaign of harassment in person and on social media. The former teacher said school officials [did almost nothing](https://www.newwaysministry.org/2017/05/19/gay-teacher-harassed-by-students-fired-by-jesuit-high-school/) to curtail the students’ behavior after he reported it. St. Ignatius officials have continued to [deny](https://www.newwaysministry.org/2017/06/02/jesuit-h-s-denies-teacher-was-fired-because-he-is-gay/) Tedeschi was fired because he is gay, suggesting that while they could not comment, in the latest alumni letter “there were many facts omitted.” Students and alumni of St. Ignatius [rallied](https://www.newwaysministry.org/2017/07/01/students-alumni-rally-round-fired-gay-teacher/) behind Tedeschi in 2017 as well.

Meanwhile, Tedeschi’s essay included his own recommendations building upon the school’s Jesuit charism for how it could become more inclusive of LGBTQ students and staff. These include changes to the non-discrimination policy, improved treatment of the school’s LGBT student group, as well as implementing some best practices for worker rights like a union. Tedeschi, who now works at a law firm specializing in non-discrimination, also said the Catholic school should “disavow invoking the ‘ministerial exemption,’ which often serves to rob victims of justice.”

Tedeschi’s recommendations reveal his new work in non-discrimination law as they are nuanced and thorough. He has not simply decried the firing of LGBTQ church workers, but offered St. Ignatius (and Catholic schools more widely) a concrete road map to ensure it practices Church teaching on labor rights in a meaningful way, including an end to anti-LGBTQ discrimination. There may be no just solution for Tedeschi’s firing, but with his wisdom and alumni pressure, St. Ignatius officials have what they need to make sure a similar incident never happens there again.

*In the last decade, more than 80 church workers have gone public about losing their jobs in LGBT-related employment disputes. You can find a full listing of these incidents*[*here*](https://www.newwaysministry.org/issues/employment/employment-updates/)*, as well as New Ways Ministry’s resources on church employment and LGBT issues*[*here*](https://www.newwaysministry.org/issues/employment/)*.*

—*Robert Shine, New Ways Ministry, May 8, 2019*

2020 WL 3808420

Supreme Court of the United States.

OUR LADY OF GUADALUPE SCHOOL , Petitioner

v.

Agnes **MORRISSEY**-**BERRU**;

St. James School, Petitioner

v.

Darryl Biel, as Personal Representative of the Estate of [Kristen Biel](http://www.westlaw.com/Search/Results.html?query=advanced%3a+OAID(5068544765)&saveJuris=False&contentType=BUSINESS-INVESTIGATOR&startIndex=1&contextData=(sc.Default)&categoryPageUrl=Home%2fCompanyInvestigator&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem)

No. 19-267

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19-348

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Argued May 11, 2020

|

July 8, 2020

[ALITO](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), J., delivered the opinion of the Court, in which [ROBERTS](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0258116001&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), C. J., and [THOMAS](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [BREYER](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0254766801&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [KAGAN](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [GORSUCH](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), and [KAVANAUGH](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0364335801&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), JJ., joined. [THOMAS](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), J., filed a concurring opinion, in which [GORSUCH](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), J., joined. [SOTOMAYOR](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), J., filed a dissenting opinion, in which [GINSBURG](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0224420501&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), J., joined.

Justice [ALITO](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) delivered the opinion of the Court.

[**[1]**](#co_anchor_F12051414183_1)These cases require us to decide whether the First Amendment permits courts to intervene in employment disputes involving teachers at religious schools who are entrusted with the responsibility of instructing their students in the faith. The First Amendment protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”  [*Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 (1952)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1952117807&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_116&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_116). Applying this principle, we held in  [*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), that the First Amendment barred a court from entertaining an employment discrimination claim brought by an elementary school teacher, Cheryl Perich, against the religious school where she taught. Our decision built on a line of lower court cases adopting what was dubbed the “ministerial exception” to laws governing the employment relationship between a religious institution and certain key employees. We did not announce “a rigid formula” for determining whether an employee falls within this exception, but we identified circumstances that we found relevant in that case, including Perich’s title as a “Minister of Religion, Commissioned,” her educational training, and her responsibility to teach religion and participate with students in religious activities.  [*Id.*, at 190–191, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  .

In the cases now before us, we consider employment discrimination claims brought by two elementary school teachers at Catholic schools whose teaching responsibilities are similar to Perich’s. Although these teachers were not given the title of “minister” and have less religious training than Perich, we hold that their cases fall within the same rule that dictated our decision in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) . The religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.

I

A

1

The first of the two cases we now decide involves Agnes Morrissey-Berru, who was employed at Our Lady of Guadalupe School (OLG), a Roman Catholic primary school in the Archdiocese of Los Angeles. Excerpts of Record (ER) 58 in No. 17–56624 (CA9) (OLG).[1](#co_footnote_B00032051414183_1) For many years, Morrissey-Berru was employed at OLG as a lay fifth or sixth grade teacher. Like most elementary school teachers, she taught all subjects, and since OLG is a Catholic school, the curriculum included religion. App. 23, 75. As a result, she was her students’ religion teacher.

**\*4** Morrissey-Berru earned a B. A. in English Language Arts, with a minor in secondary education, and she holds a California teaching credential. *Id*., at 21–22. While on the faculty at OLG, she took religious education courses at the school’s request, ER 41–ER 42, ER 44–ER 45, ER 276, and was expected to attend faculty prayer services, App. to Pet. for Cert. in No. 19–267, p. 87a.[2](#co_footnote_B00042051414183_1)

Each year, Morrissey-Berru and OLG entered into an employment agreement, App. 21,[3](#co_footnote_B00052051414183_1) that set out the school’s “mission” and Morrissey-Berru’s duties. See, *e.g*., *id.*, at 154–164.[4](#co_footnote_B00062051414183_1) The agreement stated that the school’s mission was “to develop and promote a Catholic School Faith Community,” *id.*, at 154, and it informed Morrissey-Berru that “[a]ll [her] duties and responsibilities as a Teache[r were to] be performed within this overriding commitment.” *Ibid.* The agreement explained that the school’s hiring and retention decisions would be guided by its Catholic mission, and the agreement made clear that teachers were expected to “model and promote” Catholic “faith and morals.” *Id.*, at 155. Under the agreement, Morrissey-Berru was required to participate in “[s]chool liturgical activities, as requested,” *ibid.*, and the agreement specified that she could be terminated “for ‘cause’ ” for failing to carry out these duties or for “conduct that brings discredit upon the School or the Roman Catholic Church.” *Id.*, at 155–157. The agreement required compliance with the faculty handbook, which sets out similar expectations. *Id*., at 156; App. to Pet. for Cert. in No. 19–267, at 52a–55a. The pastor of the parish, a Catholic priest, had to approve Morrissey-Berru’s hiring each year. *Id.*, at 14a; see also App. 164.

Like all teachers in the Archdiocese of Los Angeles, Morrissey-Berru was “considered a catechist,” *i.e.*, “a teacher of religio[n].” App. to Pet. for Cert. in No. 19–267, at 56a, 60a. Catechists are “responsible for the faith formation of the students in their charge each day.” *Id*., at 56a. Morrissey-Berru provided religious instruction every day using a textbook designed for use in teaching religion to young Catholic students. *Id*., at 45a–51a, 90a–92a; see App. 79–80. Under the prescribed curriculum, she was expected to teach students, among other things, “to learn and express belief that Jesus is the son of God and the Word made flesh”; to “identify the ways” the church “carries on the mission of Jesus”; to “locate, read and understand stories from the Bible”; to “know the names, meanings, signs and symbols of each of the seven sacraments”; and to be able to “explain the communion of saints.” App. to Pet. for Cert. in No. 19–267, at 91a–92a. She tested her students on that curriculum in a yearly exam. *Id*., at 87a. She also directed and produced an annual passion play. *Id.*, at 26a.

**\*5** Morrissey-Berru prepared her students for participation in the Mass and for communion and confession. *Id*., at 68a, 81a, 88a–89a. She also occasionally selected and prepared students to read at Mass. *Id*., at 83a, 89a. And she was expected to take her students to Mass once a week and on certain feast days (such as the Feast Day of St. Juan Diego, All Saints Day, and the Feast of Our Lady), and to take them to confession and to pray the Stations of the Cross. *Id*., at 68a–69a, 83a, 88a. Each year, she brought them to the Catholic Cathedral in Los Angeles, where they participated as altar servers. *Id*., at 95a–96a. This visit, she explained, was “an important experience” because “[i]t is a big honor” for children to “serve the altar” at the cathedral. *Id*., at 96a.

Morrissey-Berru also prayed with her students. Her class began or ended every day with a Hail Mary. *Id*., at 87a. She led the students in prayer at other times, such as when a family member was ill. *Id*., at 21a, 81a, 86a–87a. And she taught them to recite the Apostle’s Creed and the Nicene Creed, as well as prayers for specific purposes, such as in connection with the sacrament of confession. *Id*., at 20a–21a, 92a.

The school reviewed Morrissey-Berru’s performance under religious standards. The “ ‘Classroom Observation Report’ ” evaluated whether Catholic values were “infused through all subject areas” and whether there were religious signs and displays in the classroom. *Id.*, at 94a, 95a; App. 59. Morrissey-Berru testified that she tried to instruct her students “in a manner consistent with the teachings of the Church,” App. to Pet. for Cert. in No. 19–267, at 96a, and she said that she was “committed to teaching children Catholic values” and providing a “faith-based education.” *Id*., at 82a. And the school principal confirmed that Morrissey-Berru was expected to do these things.[5](#co_footnote_B00072051414183_1)

2

In 2014, OLG asked Morrissey-Berru to move from a full-time to a part-time position, and the next year, the school declined to renew her contract. She filed a claim with the Equal Employment Opportunity Commission (EEOC), received a right-to-sue letter, App. 169, and then filed suit under the Age Discrimination in Employment Act of 1967, 81 Stat. 602, as amended, [29 U.S.C. § 621 *et seq.*,](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=29USCAS621&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) claiming that the school had demoted her and had failed to renew her contract so that it could replace her with a younger teacher. App. 168–169. The school maintains that it based its decisions on classroom performance—specifically, Morrissey-Berru’s difficulty in administering a new reading and writing program, which had been introduced by the school’s new principal as part of an effort to maintain accreditation and improve the school’s academic program. App. to Pet. for Cert. in No. 19–267, at 66a–67a, 70a, 73a.

Invoking the “ministerial exception” that we recognized in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , OLG successfully moved for summary judgment, but the Ninth Circuit reversed in a brief opinion. [769 Fed.Appx. 460, 461 (2019)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048180916&pubNum=0006538&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_6538_461&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_6538_461). The court acknowledged that Morrissey-Berru had “significant religious responsibilities” but reasoned that “an employee’s duties alone are not dispositive under  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s framework.”  [*Ibid*.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048180916&pubNum=0006538&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) Unlike Perich, the court noted, Morrissey-Berru did not have the formal title of “minister,” had limited formal religious training, and “did not hold herself out to the public as a religious leader or minister.”  [*Ibid*.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048180916&pubNum=0006538&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) In the court’s view, these “factors” outweighed the fact that she was invested with significant religious responsibilities.  [*Ibid*.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048180916&pubNum=0006538&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) The court therefore held that Morrissey-Berru did not fall within the “ministerial exception.” OLG filed a petition for certiorari, and we granted review.

B

1

The second case concerns the late Kristen Biel, who worked for about a year and a half as a lay teacher at St. James School, another Catholic primary school in Los Angeles. For part of one academic year, Biel served as a long-term substitute teacher for a first grade class, and for one full year she was a full-time fifth grade teacher. App. 336–337. Like Morrissey-Berru, she taught all subjects, including religion. *Id*., at 288; ER 588 in No. 17–55180 (CA9) (St. James).[6](#co_footnote_B00082051414183_1)

**\*6** Biel had a B. A. in liberal studies and a teaching credential. App. 244. During her time at St. James, she attended a religious conference that imparted “[d]ifferent techniques on teaching and incorporating God” into the classroom. *Id*., at 260–262. Biel was Catholic.[7](#co_footnote_B00092051414183_1)

Biel’s employment agreement was in pertinent part nearly identical to Morrissey-Berru’s. Compare *id.*, at 154–164, with *id.*, at 320–329. The agreement set out the same religious mission; required teachers to serve that mission; imposed commitments regarding religious instruction, worship, and personal modeling of the faith; and explained that teachers’ performance would be reviewed on those bases.

Biel’s agreement also required compliance with the St. James faculty handbook, which resembles the OLG handbook. *Id.*, at 322. Compare ER 641–ER 651 (OLG) with ER 565–ER 597 (St. James). The St. James handbook defines “religious development” as the school’s first goal and provides that teachers must “mode[l] the faith life,” “exemplif[y] the teachings of Jesus Christ,” “integrat[e] Catholic thought and principles into secular subjects,” and “prepar[e] students to receive the sacraments.”  *Id.,* at ER 570–ER 572. The school principal confirmed these expectations.[8](#co_footnote_B00102051414183_1)

Like Morrissey-Berru, Biel instructed her students in the tenets of Catholicism. She was required to teach religion for 200 minutes each week, App. 257–258, and administered a test on religion every week, *id.*, at 256–257. She used a religion textbook selected by the school’s principal, a Catholic nun. *Id.*, at 255; ER 37 (St. James). The religious curriculum covered “the norms and doctrines of the Catholic Faith, including ... the sacraments of the Catholic Church, social teachings according to the Catholic Church, morality, the history of Catholic saints, [and] Catholic prayers.” App. to Pet. for Cert. in No. 19–348, p. 83a.

Biel worshipped with her students. At St. James, teachers are responsible for “prepar[ing] their students to be active participants at Mass, with particular emphasis on Mass responses,” ER 587, and Biel taught her students about “Catholic practices like the Eucharist and confession,” *id* ., at ER 226–ER 227. At monthly Masses, she prayed with her students. App. to Pet. for Cert. in No. 19–348, at 82a, 94a–96a. Her students participated in the liturgy on some occasions by presenting the gifts (bringing bread and wine to the priest). *Ibid*.

Teachers at St. James were “required to pray with their students every day,” *id.*, at 80a–81a, 110a, and Biel observed this requirement by opening and closing each school day with prayer, including the Lord’s Prayer or a Hail Mary, *id*., at 81a–82a, 93a, 110a.

As at OLG, teachers at St. James are evaluated on their fulfillment of the school’s religious mission. *Id.*, at 83a–84a. St. James used the same classroom observation standards as OLG and thus examined whether teachers “infus[ed]” Catholic values in all their teaching and included religious displays in their classrooms. *Id*., at 83a–84a, 92a. The school’s principal, a Catholic nun, evaluated Biel on these measures. *Id*., at 106a.

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**\*7** St. James declined to renew Biel’s contract after one full year at the school. She filed charges with the EEOC, and after receiving a right-to-sue letter, brought this suit, alleging that she was discharged because she had requested a leave of absence to obtain treatment for [breast cancer](http://www.westlaw.com/Link/Document/FullText?entityType=disease&entityId=Ib73a5554475411db9765f9243f53508a&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&vr=3.0&rs=cblt1.0). App. 337–338. The school maintains that the decision was based on poor performance—namely, a failure to observe the planned curriculum and keep an orderly classroom. See *id.*, at 303; App. to Pet. for Cert. in No. 19–348, at 85a–89a, 114a–115a, 120a–121a.

Like OLG, St. James obtained summary judgment under the ministerial exception, *id.*, at 74a, but a divided panel of the Ninth Circuit reversed, reasoning that Biel lacked Perich’s “credentials, training, [and] ministerial background,” [911 F.3d 603, 608 (2018)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2047125482&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_608&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_608).

Judge D. Michael Fisher, sitting by designation, dissented. Considering the totality of the circumstances, he would have held that the ministerial exception applied “because of the substance reflected in [Biel’s] title and the important religious functions she performed” as a “stewar[d] of the Catholic faith to the children in her class.”  [*Id*., at 621, 622](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2047125482&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_621&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_621).

An unsuccessful petition for rehearing en banc ensued. Judge Ryan D. Nelson, joined by eight other judges, dissented. [926 F.3d 1238, 1239 (2019)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048559816&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_1239&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_1239). Judge Nelson faulted the panel majority for “embrac[ing] the narrowest construction” of the ministerial exception, departing from “the consensus of our sister circuits that the employee’s ministerial function should be the key focus,” and demanding nothing less than a “carbon copy” of the specific facts in  [*Hosanna-Tabor*.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  [*Ibid*.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2048559816&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) We granted review and consolidated the case with OLG’s. [589 U. S. ––––, 140 S.Ct. 679, 205 L.Ed.2d 448 (2019)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2049868944&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)).

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…[**[15]**](#co_anchor_F152051414183_1)What matters, at bottom, is what an employee does. And implicit in our decision in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  was a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school. As we put it, Perich had been entrusted with the responsibility of “transmitting the Lutheran faith to the next generation.” [565 U.S., at 192, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_192&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_192)  . One of the concurrences made the same point, concluding that the exception should include “any ‘employee’ who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or *teacher of its faith*.”  [*Id*., at 199, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (opinion of ALITO, J.) (emphasis added).

Religious education is vital to many faiths practiced in the United States. This point is stressed by briefs filed in support of OLG and St. James by groups affiliated with a wide array of faith traditions. In the Catholic tradition, religious education is “ ‘intimately bound up with the whole of the Church’s life.’ ” Catechism of the Catholic Church 8 (2d ed. 2016). Under canon law, local bishops must satisfy themselves that “those who are designated teachers of religious instruction in schools ... are outstanding in correct doctrine, the witness of a Christian life, and teaching skill.” Code of Canon Law, Canon 804, § 2 (Eng. transl. 1998).

**\*11** Similarly, Protestant churches, from the earliest settlements in this country, viewed education as a religious obligation. A core belief of the Puritans was that education was essential to thwart the “chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures.”[13](#co_footnote_B00152051414183_1) Thus, in 1647, the Massachusetts General Court passed what has been called the Old Deluder Satan Act requiring every sizable town to establish a school.[14](#co_footnote_B00162051414183_1) Most of the oldest educational institutions in this country were originally established by or affiliated with churches, and in recent years, non-denominational Christian schools have proliferated with the aim of inculcating Biblical values in their students.[15](#co_footnote_B00172051414183_1) Many such schools expressly set themselves apart from public schools that they believe do not reflect their values.[16](#co_footnote_B00182051414183_1)

Religious education is a matter of central importance in Judaism. As explained in briefs submitted by Jewish organizations, the Torah is understood to require Jewish parents to ensure that their children are instructed in the faith.[17](#co_footnote_B00192051414183_1) One brief quotes Maimonides’s statement that religious instruction “is an obligation of the highest order, entrusted only to a schoolteacher possessing ‘fear of Heaven.’ ”[18](#co_footnote_B00202051414183_1) “The contemporary American Jewish community continues to place the education of children in its faith and rites at the center of its communal efforts.”[19](#co_footnote_B00212051414183_1)

Religious education is also important in Islam. “[T]he acquisition of at least rudimentary knowledge of religion and its duties [is] mandatory for the Muslim individual.”[20](#co_footnote_B00222051414183_1) This precept is traced to the Prophet Muhammad, who proclaimed that “ ‘[t]he pursuit of knowledge is incumbent on every Muslim.’ ”[21](#co_footnote_B00232051414183_1) “[T]he development of independent private Islamic schools ha[s] become an important part of the picture of Muslim education in America.”[22](#co_footnote_B00242051414183_1)

The Church of Jesus Christ of Latter-day Saints has a long tradition of religious education, with roots in revelations given to Joseph Smith. See Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints § 93:36 (2013). “The Church Board of Education has established elementary, middle, or secondary schools in which both secular and religious instruction is offered.”[23](#co_footnote_B00252051414183_1)

Seventh-day Adventists “trace the importance of education back to the Garden of Eden.”[24](#co_footnote_B00262051414183_1) Seventh-day Adventist formation “restore[s] human beings into the image of God as revealed by the life of Jesus Christ” and focuses on the development of “knowledge, skills, and understandings to serve God and humanity.”[25](#co_footnote_B00272051414183_1)

**\*12** This brief survey does not do justice to the rich diversity of religious education in this country, but it shows the close connection that religious institutions draw between their central purpose and educating the young in the faith.

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[**[16]**](#co_anchor_F162051414183_1) [**[17]**](#co_anchor_F172051414183_1)When we apply this understanding of the Religion Clauses to the cases now before us, it is apparent that Morrissey-Berru and Biel qualify for the exemption we recognized in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) . There is abundant record evidence that they both performed vital religious duties. Educating and forming students in the Catholic faith lay at the core of the mission of the schools where they taught, and their employment agreements and faculty handbooks specified in no uncertain terms that they were expected to help the schools carry out this mission and that their work would be evaluated to ensure that they were fulfilling that responsibility. As elementary school teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith. And not only were they obligated to provide instruction about the Catholic faith, but they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith. They prayed with their students, attended Mass with the students, and prepared the children for their participation in other religious activities. Their positions did not have all the attributes of Perich’s. Their titles did not include the term “minister,” and they had less formal religious training, but their core responsibilities as teachers of religion were essentially the same. And both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the schools’ definition and explanation of their roles is important. In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition. A religious institution’s explanation of the role of such employees in the life of the religion in question is important.

III

[**[18]**](#co_anchor_F182051414183_1) [**[19]**](#co_anchor_F192051414183_1)In holding that Morrissey-Berru and Biel did not fall within the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  exception, the Ninth Circuit misunderstood our decision. Both panels treated the circumstances that we found relevant in that case as checklist items to be assessed and weighed against each other in every case, and the dissent does much the same. That approach is contrary to our admonition that we were not imposing any “rigid formula.” [565 U.S., at 190, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_190&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_190)  . Instead, we called on courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception.[26](#co_footnote_B00282051414183_1)

…

In Biel’s appeal, the Ninth Circuit suggested that the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  exception should be interpreted narrowly because the ADA, [42 U.S.C. § 12101 *et seq.*,](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS12101&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) and Title VII, § 2000e–2, contain provisions allowing religious employers to give preference to members of a particular faith in employing individuals to do work connected with their activities. [911 F.3d at 611, n. 5](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2047125482&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_611&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_611); *post*, at –––– – –––– . But the *Hosanna-Tabor* exception serves an entirely different purpose. Think of the quintessential case where a church wants to dismiss its minister for poor performance. The church’s objection in that situation is not that the minister has gone over to some other faith but simply that the minister is failing to perform essential [functions in a](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) satisfactory manner.

**\*14** While the Ninth Circuit treated the circumstances that we cited in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  as factors to be assessed and weighed in every case, respondents would make the governing test even more rigid. In their view, courts should begin by deciding whether the first three circumstances—a ministerial title, formal religious education, and the employee’s self-description as a minister—are met and then, in order to check the conclusion suggested by those factors, ask whether the employee performed a religious function. Brief for Respondents 20–24. For reasons already explained, there is no basis for treating the circumstances we found relevant in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  in such a rigid manner.

[**[22]**](#co_anchor_F222051414183_1)Respondents go further astray in suggesting that an employee can never come within the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) exception unless the employee is a “practicing” member of the religion with which the employer is associated. Brief for Respondents 12–13, 21. In hiring a teacher to provide religious instruction, a religious school is very likely to try to select a person who meets this requirement, but insisting on this as a necessary condition would create a host of problems. As pointed out by petitioners, determining whether a person is a “co-religionist” will not always be easy. See Reply Brief 14 (“Are Orthodox Jews and non-Orthodox Jews coreligionists? ... Would Presbyterians and Baptists be similar enough? Southern Baptists and Primitive Baptists?”). Deciding such questions would risk judicial entanglement in religious issues.

Expanding the “co-religionist” requirement, Brief for Respondents 28–29, 44, to exclude those who no longer practice the faith would be even worse, *post*, at –––– . Would the test depend on whether the person in question no longer considered himself or herself to be a member of a particular faith? Or would the test turn on whether the faith tradition in question still regarded the person as a member in some sense?

Respondents argue that Morrissey-Berru cannot fall within the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  exception because she said in connection with her lawsuit that she was not “a practicing Catholic,” but acceptance of that argument would require courts to delve into the sensitive question of what it means to be a “practicing” member of a faith, and religious employers would be put in an impossible position. Morrissey-Berru’s employment agreements required her to attest to “good standing” with the church. See App. 91, 144, 154. Beyond insisting on such an attestation, it is not clear how religious groups could monitor whether an employee is abiding by all religious obligations when away from the job. Was OLG supposed to interrogate Morrissey-Berru to confirm that she attended Mass every Sunday?

[**[23]**](#co_anchor_F232051414183_1)Respondents argue that the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  exception is not workable unless it is given a rigid structure, but we declined to adopt a “rigid formula” in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , and the lower courts have been applying the exception for many years without such a formula. Here, as in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , it is sufficient to decide the cases before us. When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.

\* \* \*

For these reasons, the judgment of the Court of Appeals in each case is reversed, and the cases are remanded for proceedings consistent with this opinion.

*It is so ordered.*

Justice [THOMAS](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), with whom Justice [GORSUCH](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) joins, concurring.

I agree with the Court that Morrissey-Berru’s and Biel’s positions fall within the “ministerial exception,”[1](#co_footnote_B00322051414183_1) because, as Catholic school teachers, they are charged with “carry[ing] out [the religious] mission” of the parish schools. *Ante*, at –––– . The Court properly notes that “judges have no warrant to second-guess [the schools’] judgment” of who should hold such a position “or to impose their own credentialing requirements.” *Ante*, at –––– . Accordingly, I join the Court’s opinion in full. I write separately, however, to reiterate my view that the Religion Clauses require civil courts to defer to religious organizations’ good-faith claims that a certain employee’s position is “ministerial.” See  [*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 196, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_196&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_196) (THOMAS, J., concurring).

Justice [SOTOMAYOR](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), with whom Justice [GINSBURG](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0224420501&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) joins, dissenting.

Two employers fired their employees allegedly because one had [breast cancer](http://www.westlaw.com/Link/Document/FullText?entityType=disease&entityId=Ib73a5554475411db9765f9243f53508a&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&vr=3.0&rs=cblt1.0) and the other was elderly. Purporting to rely on this Court’s decision in  [*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), the majority shields those employers from disability and age-discrimination claims. In the Court’s view, because the employees taught short religion modules at Catholic elementary schools, they were “ministers” of the Catholic faith and thus could be fired for any reason, whether religious or nonreligious, benign or bigoted, without legal recourse. The Court reaches this result even though the teachers taught primarily secular subjects, lacked substantial religious titles and training, and were not even required to be Catholic. In foreclosing the teachers’ claims, the Court skews the facts, ignores the applicable standard of review, and collapses  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s careful analysis into a single consideration: whether a church thinks its employees play an important religious role. Because that simplistic approach has no basis in law and strips thousands of schoolteachers of their legal protections, I respectfully dissent.

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**\*17** Our pluralistic society requires religious entities to abide by generally applicable laws. *E.g.*,  [*Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 879–882, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1990064132&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_879&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_879). Consistent with the First Amendment (and over sincerely held religious objections), the Government may compel religious institutions to pay Social Security taxes for their employees,  [*United States v. Lee*, 455 U.S. 252, 256–261, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1982108979&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_256&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_256), deny nonprofit status to entities that discriminate because of race,  [*Bob Jones Univ. v. United States*, 461 U.S. 574, 603–605, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983124276&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_603&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_603), require applicants for certain public benefits to register with Social Security numbers,  [*Bowen v. Roy*, 476 U.S. 693, 699–701, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986130120&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_699&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_699), enforce child-labor protections,  [*Prince v. Massachusetts*, 321 U.S. 158, 166–170, 64 S.Ct. 438, 88 L.Ed. 645 (1944)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1944116705&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_166&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_166), and impose minimum-wage laws,  [*Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303–306, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985120752&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_303&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_303).

…The “ministerial exception,” by contrast, is a judge-made doctrine. This Court first recognized it eight years ago in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , concluding that the First Amendment categorically bars certain antidiscrimination suits by religious leaders against their religious employers. [565 U.S., at 188–190, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_188&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_188)  . When it applies, the exception is extraordinarily potent: It gives an employer free rein to discriminate because of race, sex, pregnancy, age, disability, or other traits protected by law when selecting or firing their “ministers,” even when the discrimination is wholly unrelated to the employer’s religious beliefs or practices.  [*Id.*, at 194–195, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  . That is, an employer need not cite or possess a religious reason at all; the ministerial exception even condones animus.

…

**\*18** This focus on leadership led to a consistent conclusion: Lay faculty, even those who teach religion at church-affiliated schools, are not “ministers.” In  [*Geary v. Visitation of Blessed Virgin Mary Parish School*, 7 F.3d 324 (1993)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993192289&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), for instance, the Third Circuit rejected a Catholic school’s view that “[t]he unique and important role of the elementary school teacher in the Catholic education system” barred a teacher’s discrimination claim under the First Amendment.  [*Id.*, at 331](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993192289&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_331&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_331). In  [*Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (1990)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1990057251&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), the Fourth Circuit found a materially similar statutory ministerial exception inapplicable to teachers who taught “all classes” “from a pervasively religious perspective,” “le[d]” their “students in prayer,” and were “required to subscribe to [a church] statement of faith as a condition of employment.”  [*Id.*, at 1396](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1990057251&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_350_1396&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_1396). Similar examples abound. See, *e.g.*,  [*EEOC v. Mississippi College*, 626 F.2d 477, 479, 485 (C.A.5 1980)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980137037&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_350_479&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_479) (ministerial exception inapplicable to faculty members of a Baptist college that “conceive[d] of education as an integral part of its Christian mission” and “expected” faculty “to serve as exemplars of practicing Christians”);  [*EEOC v. Fremont Christian School*, 781 F.2d 1362, 1369–1370 (C.A.9 1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986105869&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_350_1369&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_1369) (ministerial exception inapplicable to teachers whom a church considered as performing “an integral part of the religious mission of the Church to its children”); cf.  [*Rayburn*, 772 F.2d at 1168](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985146982&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_350_1168&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_1168) (“Lay ministries, even in leadership roles within a congregation, do not compare to the institutional selection for hire of one member with special theological training to lead others”).

 [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  did not upset this consensus. Instead, it recognized the ministerial exception’s roots in protecting religious “elections” for “ecclesiastical offices” and guarding the freedom to “select” titled “clergy” and churchwide leaders. [565 U.S., at 182, 184, 186–187, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_182&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_182)  (internal quotation marks omitted). To be sure, the Court stated that the “ministerial exception is not limited to the head of a religious congregation.”  [*Id.*, at 190, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  . Nevertheless, this Court explained that the exception applies to someone with a leadership role “distinct from that of most of [the organization’s] members,” someone in whom “[t]he members of a religious group put their faith,” or someone who “personif[ies]” the organization’s “beliefs” and “guide[s] it on its way.”  [*Id.*, at 188, 191, 196, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))

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II

**\*20** Until today, no court had held that the ministerial exception applies with disputed facts like these and lay teachers like respondents, let alone at the summary-judgment stage. See [911 F.3d 603, 610 (C.A.9 2018)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2047125482&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_610&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_610) (case below in No. 19–348); see also *supra,* at –––– – –––– .

Only by rewriting  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) does the Court reach a different result. The Court starts with an unremarkable view: that  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s “recognition of the significance of ” the first three “factors” in that case “did not mean that they must be met—or even that they are necessarily important—in all other cases.” *Ante*, at –––– – –––– . True enough. One can easily imagine religions incomparable to those at issue in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) and here. But then the Court recasts  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  itself: Apparently, the touchstone all along was a two-Justice concurrence. To that concurrence, “[w]hat matter[ed]” was “the religious function that [Perich] performed” and her “functional status.”  [*Hosanna-Tabor*, 565 U.S., at 206, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_206&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_206)  (opinion of ALITO, J.). Today’s Court yields to the concurrence’s view with identical rhetoric. “What matters,” the Court echoes, “is what an employee does.” *Ante*, at –––– .

But this vague statement is no easier to comprehend today than it was when the Court declined to adopt it eight years ago. It certainly does not sound like a legal framework. Rather, the Court insists that a “religious institution’s explanation of the role of [its] employees in the life of the religion in question is important.” *Ante*, at –––– ; see also *ante*, at –––– – –––– (THOMAS, J., concurring) (urging complete deference to a religious institution in determining which employees are exempt from antidiscrimination laws). But because the Court’s new standard prizes a functional importance that it appears to deem churches in the best position to explain, one cannot help but conclude that the Court has just traded legal analysis for a rubber stamp.[3](#co_footnote_B00362051414183_1)

Indeed, the Court reasons that “judges cannot be expected to have a complete understanding and appreciation” of the law and facts in ministerial-exception cases, *ante*, at –––– , and all but abandons judicial review. Although today’s decision is limited to certain “teachers of religion,” *ante,* at –––– – ––––, its reasoning risks rendering almost every Catholic parishioner and parent in the Archdiocese of Los Angeles a Catholic minister.[4](#co_footnote_B00372051414183_1) That is, the Court’s apparent deference here threatens to make nearly anyone whom the schools might hire “ministers” unprotected from discrimination in the hiring process. That cannot be right. Although certain religious functions may be important to a church, a person’s performance of some of those functions does not mechanically trigger a categorical exemption from generally applicable antidiscrimination laws.

**\*21** Today’s decision thus invites the “potential for abuse” against which circuit courts have long warned.  [*Scharon*, 929 F.2d, at 363, n. 3](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991059978&pubNum=0000350&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_350_363&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_350_363). Nevermind that the Court renders almost all of the Court’s opinion in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) irrelevant. It risks allowing employers to decide for themselves whether discrimination is actionable. Indeed, today’s decision reframes the ministerial exception as broadly as it can, without regard to the statutory exceptions tailored to protect religious practice. As a result, the Court absolves religious institutions of any animus completely irrelevant to their religious beliefs or practices and all but forbids courts to inquire further about whether the employee is in fact a leader of the religion. Nothing in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) (or at least its majority opinion) condones such judicial abdication.

III

Faithfully applying  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s approach and common sense confirms that the teachers here are not Catholic “ministers” as a matter of law. This is especially so because the employers seek summary judgment, meaning the Court must “view the facts and draw reasonable inferences in the light most favorable to” the teachers.  [*Scott v. Harris*, 550 U.S. 372, 378, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012126147&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_378&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_378) (internal quotation marks omitted).[5](#co_footnote_B00382051414183_1)

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On these records, the Ninth Circuit correctly concluded that neither school had shown that the ministerial exception barred the teachers’ claims for disability and age discrimination. At the very least, these cases should have proceeded to trial. Viewed in the light most favorable to the teachers, the facts do not entitle the employers to summary judgment.

First, and as the Ninth Circuit explained, neither school publicly represented that either teacher was a Catholic spiritual leader or “minister.” Neither conferred a title reflecting such a position. Rather, the schools referred to both Biel and Morrissey-Berru as “lay” teachers, which the circuit courts have long recognized as a mark of nonministerial, as opposed to “ministerial,” status. See *supra*, at –––– – –––– ; App. to Pet. for Cert. in No. 19–267, at 32a–42a; App. 91–100, 127–164, 244–46, 320–329.

In response, the Court worries that “attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.” *Ante*, at –––– . That may or may not be true, but it is irrelevant here. These cases are not about “less formal” religions; they are about the Catholic Church and its publicized and undisputedly “formal organizational structur[e].” *Ibid.* After all, the right to free exercise has historically “allow[ed] churches and other religious institutions to define” their own “membership” and internal “organization.” McConnell, [The Origins and Historical Understanding of Free Exercise of Religion, 103 Harv. L. Rev. 1409, 1464–1465 (1990)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0101279742&pubNum=0003084&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=LR&fi=co_pp_sp_3084_1464&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_3084_1464). But that freedom of choice should carry consequences in litigation. And here, like the faith at issue in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , the Catholic Church uses formal titles.

The Court then turns to irrelevant or disputed facts. The Court notes, for example, that a religiously significant term “rabbi” translates to “teacher,” *ante*, at –––– , suggesting that Biel’s and Morrissey-Berru’s positions as lay teachers conferred religious titles after all. But that wordplay unravels when one imagines the Court’s logic as applied to a math or gym or computer “teacher” at either school. The title “teacher” does not convey ministerial status. Nor does the Court gain purchase from the disputed fact that Biel and Morrissey-Berru were “regarded as ‘catechists’ ” “ ‘responsible for the faith formation of the[ir] students.’ ” *Ante*, at ––––, –––– . For one thing, the Court discusses evidence from only Morrissey-Berru’s case (not Biel’s).[7](#co_footnote_B00402051414183_1) For another, the Court invokes the disputed deposition testimony of a school administrator while ignoring record evidence refuting that characterization and suggesting that Morrissey-Berru never completed the full catechist training program. See, *e.g.*, Excerpts of Record in No. 17–56624 (CA9), at 41–42, 44–45, 67. Although the Archdiocese does confer titles and holds a formal “Catechist Commissioning” every September, *id.*, at 42, 45, the record does not suggest that either teacher here was so commissioned. In relying on disputed factual assertions, the Court’s blinkered approach completely disregards the summary-judgment standard.

**\*24** Second (and further undermining the schools’ claims), neither teacher had a “significant degree of religious training” or underwent a “formal process of commissioning.”  [*Hosanna-Tabor*, 565 U.S., at 191, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_191&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_191)  ; cf. Excerpts of Record in No. 17–56624 (CA9), at 42 (identifying similarly formal training and commissioning process within the Catholic Church). Nor did either school require such training or commissioning as a prerequisite to gaining (or keeping) employment. In Biel’s case, the record reflects that she attended a single conference that lasted “four or five hours,” briefly discussed “how to incorporate God into ... lesson plans,” and otherwise “showed [teachers] how to do art and make little pictures or things like that.” App. 262. Notably, all elementary school faculty attended the conference, including the computer teacher. *Id.*, at 261–263. In turn, Our Lady of Guadalupe did not ask Morrissey-Berru to undergo any religious training for her first 13 years of teaching, until it asked her to attend the uncompleted program described above. See *id.*, at 76–77. This consideration instructs that the teachers here did not fall within the ministerial exception.

Third, neither Biel nor Morrissey-Berru held herself out as having a leadership role in the faith community. Neither claimed any benefits (tax, governmental, ceremonial, or administrative) available only to spiritual leaders. Cf.  [*Hosanna-Tabor*, 565 U.S., at 191–192, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_191&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_191)  . Nor does it matter that all teachers signed contracts agreeing to model and impart Catholic values. This component of the  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) inquiry focuses on outward-facing behavior, and neither Biel nor Morrissey-Berru publicly represented herself as anything more than a fifth-grade teacher. App. to Brief in Opposition in No. 19–267, at 1a–2a; App. 249–250. The Court does not grapple with this third component of  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s inquiry, which seriously undermines the schools’ cases.

That leaves only the fourth consideration in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) : the teachers’ function. To be sure, Biel and Morrissey-Berru taught religion for a part of some days in the week. But that should not transform them automatically into ministers who “guide” the faith “on its way.”  [*Hosanna-Tabor*, 565 U.S., at 196, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_196&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_196)  ; see also *supra,* at –––– – –––– . Although the Court does not resolve this functional question with “a stopwatch,” it still considers the “amount of time an employee spends on particular activities” in “assessing that employee’s status.”  [*Hosanna-Tabor*, 565 U.S., at 193–194, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_193&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_193)  . Here, the time Biel and Morrissey-Berru spent on secular instruction far surpassed their time teaching religion. For the vast majority of class, they taught subjects like reading, writing, spelling, grammar, vocabulary, math, science, social studies, and geography. In so doing, both were like any public school teacher in California, subject to the same statewide curriculum guidelines. [911 F.3d, at 606](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2047125482&pubNum=0000506&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_506_606&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_606). In other words, both Biel and Morrissey-Berru had almost exclusively secular duties, making it especially improper to deprive them of all legal protection when their employers have not offered any religious reason for the alleged discrimination.

Nor is it dispositive that both teachers prayed with their students. Biel did not lead devotionals in her classroom, did not teach prayers, and had a minor role in monitoring student behavior during a once-a-month mass. App. 79, 252–253, 256–259. Morrissey-Berru did lead classroom prayers, bring her students to a cathedral once a year, direct the school Easter play, and sign a contract directing her to “assist with Liturgy Planning.” App. to Pet. for Cert. in No. 19–267, at 42a, 68a–69a, 95a–96a. But these occasional tasks should not trigger as a matter of law the ministerial exception. Morrissey-Berru did not lead mass, deliver sermons, or select hymns. *Id.*, at 89a. And unlike the teacher in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) , there is no evidence that Morrissey-Berru led devotional exercises. App. to Pet. for Cert. in No. 19–267, at 89a. Her limited religious role does not fit  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) ’s description of a “minister to the faithful.” [565 U.S., at 189, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_189&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_189)  .

**\*25** Nevertheless, the Court insists that the teachers are ministers because “implicit in our decision in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  was a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” *Ante*, at –––– . But teaching religion in school alone cannot dictate ministerial status. If it did, then  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  wasted precious pages discussing titles, training, and other objective indicia to examine whether Cheryl Perich was a minister. Not surprisingly, the Government made this same point earlier in Biel’s case: “If teaching religion to elementary school students for a half-hour each day, praying with them daily, and accompanying them to weekly or monthly religious services were sufficient to establish a teacher as a minister of the church within the meaning of the ministerial exception, the Supreme Court would have had no need for most of its discussion in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) .” Brief for EEOC as *Amicus Curiae* in No. 17–55180 (CA9), p. 21. Rather, “the Court made clear in  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))  that context matters.” *Ibid.* Indeed.[8](#co_footnote_B00412051414183_1)

Were there any doubt left about the proper result here, recall that neither school has shown that it required its religion teachers to be Catholic. The Court does not explain how the schools here can show, or have shown, that a non-Catholic “personif[ies]” Catholicism or leads the faith.  [*Hosanna-Tabor*, 565 U.S., at 188, 132 S.Ct. 694](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000780&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&fi=co_pp_sp_780_188&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_188)  . Instead, the Court remarks that a “rigid” coreligionist requirement might “not always be easy” to apply to faiths like Judaism or variations of Protestantism. *Ante*, at –––– – –––– . Perhaps. But that has nothing to do with Catholicism.

Pause, for a moment, on the Court’s conclusion: Even if the teachers were not Catholic, and even if they were forbidden to participate in the church’s sacramental worship, they would nonetheless be “ministers” of the Catholic faith simply because of their supervisory role over students in a religious school. That stretches the law and logic past their breaking points. (Indeed, it is ironic that Our Lady of Guadalupe School seeks complete immunity for age discrimination when its teacher handbook promised not to discriminate on that basis.) As the Government once put it, even when a school has a “pervasively religious atmosphere,” its faculty are unlikely ministers when “there is no requirement that its teachers even be members of [its] religious denomination.” Brief for Appellee in No. 84–2779 (CA9 1986), pp. 11, 29, n. 17. It is hard to imagine a more concrete example than these cases.

\* \* \*

The Court’s conclusion portends grave consequences. As the Government (arguing for Biel at the time) explained to the Ninth Circuit, “thousands of Catholic teachers” may lose employment-law protections because of today’s outcome. Recording of Oral Arg. 25:15–25:30 in No. 17–55180 (July 11, 2018), https://www.ca9.uscourts.gov/media/view\_video.php?pk\_vid=0000014022. Other sources tally over a hundred thousand secular teachers whose rights are at risk. See, *e.g.*, Brief for Virginia et al. as *Amici Curiae* 33, n. 25. And that says nothing of the rights of countless coaches, camp counselors, nurses, social-service workers, in-house lawyers, media-relations personnel, and many others who work for religious institutions. All these employees could be subject to discrimination for reasons completely irrelevant to their employers’ religious tenets.

In expanding the ministerial exception far beyond its historic narrowness, the Court overrides Congress’ carefully tailored exceptions for religious employers. Little if nothing appears left of the statutory exemptions after today’s constitutional broadside. So long as the employer determines that an employee’s “duties” are “vital” to “carrying out the mission of the church,” *ante*, at –––– – –––– , then today’s laissez-faire analysis appears to allow that employer to make employment decisions because of a person’s skin color, age, disability, sex, or any other protected trait for reasons having nothing to do with religion.

**\*26** This sweeping result is profoundly unfair. The Court is not only wrong on the facts, but its error also risks upending antidiscrimination protections for many employees of religious entities. Recently, this Court has lamented a perceived “discrimination against religion.” *E.g.*, *Espinoza* v. *Montana Dept. of Revenue*, *ante*, at 12. Yet here it swings the pendulum in the extreme opposite direction, permitting religious entities to discriminate widely and with impunity for reasons wholly divorced from religious beliefs. The inherent injustice in the Court’s conclusion will be impossible to ignore for long, particularly in a pluralistic society like ours. One must hope that a decision deft enough to remold  [*Hosanna-Tabor*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026844325&pubNum=0000708&originatingDoc=I5d9079bbc0be11eaacfacd2d37fb36e9&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) to fit the result reached today reflects the Court’s capacity to cabin the consequences tomorrow.

I respectfully dissent.

The Ministerial Exception Allows Racial Discrimination by Religions

16 JUL 2020

[LESLIE C. GRIFFIN](https://verdict.justia.com/author/griffin)



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The ministerial exception is a First Amendment rule that allows race discrimination cases against religious organizations to be dismissed.

**Racial Discrimination Cases Are Dismissed**

A [federal district court in Georgia](https://casetext.com/case/ross-v-metropolitan-church-of-god) (2007) rejected on ministerial exception grounds the lawsuit by an African American pastor, the “director of worship arts,” for race discrimination. One of the things his pastor told him was “this is a white church, Shirley Caesar music won’t work here,” and “since you’ve come, the church is experiencing white flight.”

An African American Catholic priest alleged racial discrimination against his bishop and diocese. The [Second Circuit](https://law.justia.com/cases/federal/appellate-courts/ca2/06-1041/06-1041-cv_opn-2011-03-27.html) (2008) ruled that the ministerial exception barred his race discrimination claim.

A Christian seminary’s tenured professor had his racial discrimination case barred by the ministerial exception by the [Supreme Court of Kentucky](https://scholar.google.com/scholar_case?case=11664645914290563149) (2014).

A Methodist African American pastor had his racial discrimination case dismissed by the [Eleventh Circuit](https://law.justia.com/cases/federal/appellate-courts/ca11/09-13316/200913316-2011-02-28.html) (2010) due to the ministerial exception.

The [D.C. Court of Appeals](https://law.justia.com/cases/district-of-columbia/court-of-appeals/2005/03-cv-1270-5.html) (2005) dismissed a Caucasian woman school principal’s race discrimination case against the Archdiocese of Washington because of the ministerial exception.

[The Seventh Circuit](https://law.justia.com/cases/federal/appellate-courts/F3/21/184/623632/) (1994) ruled that an African American woman minister’s race and sex discrimination case against the Methodist Church was dismissed by the ministerial exception.

A White woman’s lawsuit that claimed she was denied a pastoral position due to racial and sexual discrimination was dismissed by the [Fourth Circuit](https://law.justia.com/cases/federal/appellate-courts/F2/772/1164/250104/) (1985) due to the ministerial exception.

A White 67-year-old woman who worked for the Salvation Army had her race and age discrimination lawsuit dismissed by a [federal district court in Michigan](https://law.justia.com/cases/federal/district-courts/michigan/miedce/2%3A2014cv12656/292833/24/) (2015) because of the ministerial exception.

A Hispanic woman’s national origin and gender discrimination claims against her Catholic bishop were dismissed by the [Seventh Circuit](https://law.justia.com/cases/federal/appellate-courts/F3/320/698/615668/) (2003) due to the ministerial exception.

Years ago, there was one small victory. The [Fifth Circuit](https://law.justia.com/cases/federal/appellate-courts/F2/626/477/158272/) (1980) allowed a White woman to proceed with a claim alleging Mississippi College “has discriminated on the basis of race by failing to recruit and hire Black faculty members.” The court relied largely on the ground that the plaintiff was a faculty member, not a minister.  With recent Supreme Court decisions, it is not clear if she would still win today.

The point about the refusal to allow racial discrimination lawsuits was made in a 2017 ministerial exception case in the [Northern District of Illinois](https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1%3A2016cv11576/334850/15/). In *rejecting* the plaintiff’s sexual orientation discrimination claim because he was a minister, the court observed:

it is notable that the ministerial exception even bars claims of race discrimination against religious organizations. Demkovich does not explain why the exception bars ministers from bringing claims of race discrimination—a form of discrimination that draws the strictest form of constitutional scrutiny—but would be overridden by a claim premised on marital status. The ministerial exception does apply despite the fundamental right to marry.

The ministerial allows any form of discrimination by religious organizations to proceed without lawsuit.

**What is the Ministerial Exception?**

What *is* this ministerial exception that was present throughout the previous paragraphs? It is a First Amendment rule the courts created to dismiss *any*discrimination cases—race, gender, national origin, sexual orientation, age, equal pay, disabilities, and so forth—against *any*religious employers—elementary and secondary schools, hospitals, universities, camps, orphanages, and more in addition to synagogues and churches. The ministerial exception is an affirmative defense. If the employer asserts it and wins, the lawsuit ends. The discriminatory conduct never gets reviewed. If you are a minister, your lawsuit ends, no matter what your employer has done to you.

The ministerial exception has been back in the news because of the Supreme Court’s recent decision in [*Biel*](https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf) and [*Morrissey-Berru*](https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf)*,*two cases about Catholic school teachers who claimed they were fired because they were developing breast cancer and getting older. Seven justices concluded the two Catholic elementary school teachers were ministers, and so their age and disabilities discrimination cases were dismissed.

Without the ministerial exception, if they got to court, the plaintiffs could win or lose, depending on the facts of their case. With the ministerial exception, plaintiffs always lose. The Supreme Court’s recent decision expanded the exception’s range even farther, freeing religious organizations from lawsuits when they fire their “ministers,” even for getting older or developing breast cancer, illegal action which is not supported by their religious beliefs at all.

I have long been an opponent of the ministerial exception. I believe the employees should get into court and win or lose there. By now, I have written numerous losing briefs on the subject. This term, the employees picked up two votes—Justices Sonia Sotomayor and Justice Ruth Bader Ginsburg. Those two justices understood that broadening the ministerial exception will end too many civil rights cases.

**The Ministerial Exception Was Already Broad**

Many people have been analyzing the Supreme Court’s cases about the ministerial exception, [*Hosanna-Tabor*](https://www.oyez.org/cases/2011/10-553) in 2012, and *Biel*and *Morrissey-Berru* on July 8, 2020. But other courts created the exception long before 2012. Usually the Fifth Circuit is given credit for creating the exception in 1972, in [*McClure v. Salvation Army*](https://law.justia.com/cases/federal/appellate-courts/F2/460/553/190785/), where Billie McClure alleged that she was paid less than her male colleagues and then fired because of her complaints about the inequalities. The court dismissed the case, reasoning that, under the First Amendment, the court did not want to intrude on the Salvation Army’s religious decision-making.

The courts have dismissed cases around the country ever since, with the Supreme Court giving them more courage to do so as it expands the exception to include more and more employees.

I was struck by the Political Gabfest’s recent podcast on the [*Ministerial Exception*](https://slate.com/transcripts/NmFoR1ZKMGFKN0ZFNUN0VXhaaStjNHh6NHA1VGRLZUJ5Z2JRN3JFc3ZzZz0%3D)*,*with discussion, as always, with David Plotz, Emily Bazelon, and John Dickerson. They asked the question:

That when people think about discriminate, the idea that you if you’re a teacher at a Catholic school and the Catholic school decides, oh, you know, we don’t want to have black teachers here, we can do that and we can get rid of them because they’re black. Like, that seems completely crazy. But is that now allowed?

That is *now*allowed, and as the cases above demonstrate, *was* allowed before. The ministerial exception gives religious organizations freedom to discriminate any way they want, leaving the plaintiffs without any legal recourse, even if racial discrimination is at stake.

In 2011, as the Supreme Court was deciding its first, 2012 case, my UNLV colleague, Ian Bartrum, wrote an article called [*Religion and Race: The Ministerial Exception Reexamined*](https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1001&context=nulr_online) (2011). He argued:

I argue in favor of robust doctrinal protections for church autonomy in most ministerial hiring decisions, but because race occupies a special and central place in our modern constitutional consciousness, I conclude that we cannot permit religious organizations to discriminate on that basis.

The law, however, has not listened. It did then and does still allow religious organizations to discriminate on the basis of race. In the ministerial exception, race is no different from any other characteristic.

**Religious Organizations Did and Do Discriminate on the Basis of Race**

Allowing religious organizations to be free from racial discrimination lawsuits does not help the cause of racial equality in the United States. Recent protests have called the media’s attention to the long-ignored work of Black Catholics for racial justice in their church. Professor Shannen Dee Williams, for example, in an essay entitled [*The Church Must Make Reparation for Its Role in Slavery, Segregation*](https://www.ncronline.org/news/opinion/church-must-make-reparation-its-role-slavery-segregation), observes that “it has taken so long for the institutional church and many non-Black Catholics to embrace the rally cry of #BlackLivesMatter.” It “must be said, too, that the recent Catholic statements on racism and rising protests fall way short when it comes to acknowledging the church’s role in the contemporary crisis and direct complicity in the sins of anti-Black racism, slavery and segregation in the modern era.”

Williams, who is an expert in Black Catholic history, reminds us of the history of racism in Catholicism:

The historical record is inundated with gut-wrenching examples of Black Catholic faithfulness in the face of unholy discrimination and segregation in white Catholic parishes, schools, hospitals, convents, seminaries and neighborhoods. Yet, this history is rarely incorporated into dominant narratives of the American Catholic experience.

The denial of the dignity and sanctity of Black life is a part of the DNA of this country. It is also a foundational sin of the American Catholic Church. Black Catholic history reveals that the church has never been an innocent bystander in the history of white supremacy. If there will ever be a chance for true peace and reconciliation, the Catholic Church must finally declare with all of its might and resources that Black lives do matter. The goal for Black people has never been charity; it is full justice, human rights, freedom and the complete dismantling of white supremacy, beginning with the church.

That “full justice” will not exist as long as the courts interpret religious freedom to include a ministerial exception that tosses racial discrimination lawsuits out of court.

Or age, disabilities, gender, national origin, sexual orientation, or any other discrimination prohibited by law. The courts should help people beat discrimination, not give religious organizations the right to discriminate against anyone they call a minister, no matter what the employee thinks her job is.