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Legal Sidebar

Our Lady of Guadalupe and the Ministerial Exception to Antidiscrimination Laws

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On May 11, the Supreme Court is set to hear oral argument by telephone in two cases involving a doctrine known as the "ministerial exception." The ministerial exception prevents courts from interfering with churches' decisions to fire, demote, or otherwise discipline their ministers—even if those actions would otherwise violate federal laws prohibiting employment discrimination. Lower courts have divided on the question of when a religious organization's employee qualifies as a "minister" under this doctrine. Two cases, combined under the caption *Our Lady of Guadalupe School v. Morrissey-Berru*, present the Supreme Court with the opportunity to clarify when teachers at religious schools should be considered ministers who are unprotected by federal antidiscrimination laws. This Legal Sidebar discusses Supreme Court precedent establishing the ministerial exception and then focuses on the cases under review at the Supreme Court, explaining their procedural history and the parties' arguments.

Legal Background: Ministerial Exception

The Supreme Court has long recognized that the Religion Clauses of the U.S. Constitution's First Amendment prevent courts from adjudicating certain types of religious disputes. For example, the Constitution protects churches' freedom to decide "matters of church government," allowing them to select clergy without government interference. In a 2012 decision, *Hosanna-Tabor Evangelical Lutheran Church v. Equal Employment Opportunity Commission*, the Supreme Court held that the First Amendment requires a "ministerial exception" to federal antidiscrimination laws for "claims concerning the employment relationship between a religious institution and its ministers." In that case, a Lutheran school allegedly unlawfully fired a teacher in retaliation for her threat to sue the school under the Americans with Disabilities Act (ADA). The church had designated the fired employee as a "called" teacher, meaning she had completed a months-long colloquy program at a Lutheran school, been endorsed by the local Synod district, and was elected by the local congregation as a commissioned minister. She taught religion classes and led the students in prayer and religious services. Under the circumstances, the Supreme Court concluded that the ministerial exception applied to this teacher, requiring the lower court to dismiss her employment discrimination suit.

The Court emphasized four factors in holding that the teacher in *Hosanna-Tabor* qualified as "a minister covered by the ministerial exception." First, the Court noted that the church labeled her "as a minister,

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with a role distinct from that of most of its members." Second, the Court stressed that the church gave her this title only after "significant . . . religious training" and "a formal process of commissioning." Third, the teacher held herself out as a minister of the church, in part by claiming a federal tax exemption available only to ministers. And fourth, the Court said that her "job duties reflected a role in conveying the Church's message and carrying out its mission." The school described her role as teaching "the Word of God," and she led religious activities. The Court declined, however, to say whether any of these factors, standing alone, could be sufficient to qualify a teacher as a minister. Accordingly, the Court left open the question of whether a "lay" teacher—one not designated as a minister—who performed similar religious job duties to the teacher in *Hosanna-Tabor* could also be considered a minister.

The Supreme Court's decision was unanimous, but two Justices wrote separate concurrences stating their own views on when employees should be considered ministers. Justice Thomas argued against the multifactor test in the majority opinion, maintaining that courts should "defer to a religious organization's good-faith understanding of who qualifies as its minister" because "the question [of] whether an employee is a minister is itself religious in nature." Justice Alito, joined by Justice Kagan, said that rather than focusing on the title of "minister," "courts should focus on the function performed by persons who work for religious bodies." He suggested that courts should focus on "objective functions" critical to "the autonomy of any religious group," which he described as "roles of religious leadership, worship, ritual, [or] expression." In his view, this should include employees "who are entrusted with teaching and conveying the tenets of the faith to the next generation."

Procedural History

Biel v. St. James School

One of the two combined cases at the Court is *Biel v. St. James School*. While that appeal reached the Supreme Court after the appeal in *Our Lady of Guadalupe,* the underlying opinion in *Biel* was issued first, in December 2018, by a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit. In *Biel*, a teacher was fired from a Roman Catholic school after telling the school that she had been diagnosed with breast cancer and would have to take time off for treatment. She sued the school, arguing that her firing violated the ADA. In response, the school invoked the ministerial exception, arguing that her employment discrimination claim should be dismissed. After considering the four factors from *Hosanna-Tabor*, the Ninth Circuit held that the ministerial exception did not shield the school from liability.

First, the appeals court said that the school had not designated the teacher as a minister, stating that there was "nothing religious 'reflected in' [the teacher's] title." Second, the court noted that the teacher had very little religious training—the teacher had received only a half-day training in Catholic pedagogy—and the school did not have religious requirements for her position, as it did not require its teachers to be Catholic. Third, the Ninth Circuit observed that the teacher did not refer to herself as a minister. It was "only with respect to the fourth consideration" that the court believed the teacher had "anything in common" with the teacher in *Hosanna-Tabor*. Both teachers taught religious classes and participated in religious services. But the Ninth Circuit held that the fact that a teacher performs religious job duties was not sufficient to qualify a teacher as a minister, stating that the ministerial exception should not apply based solely on satisfying *Hosanna-Tabor*'s fourth factor. Moreover, the Ninth Circuit also concluded that the *Biel* teacher's religious job duties were not equivalent to the religious functions performed in *Hosanna-Tabor*. Because the teacher in *Biel* did not *lead* prayers or mass, but only joined students in those activities, the Ninth Circuit said that the teacher did not have "the kind of close guidance and involvement" that the *Hosanna-Tabor* teacher had "in her students' spiritual lives."

In June 2019, the Ninth Circuit denied the school's petition asking for all the Ninth Circuit judges to reconsider the three-judge panel's opinion. Nine judges dissented from the order denying rehearing *en*

banc, arguing that the panel's opinion read the ministerial exception too narrowly, conflicting with decisions from other federal courts of appeal and with *Hosanna-Tabor* itself. These judges also disagreed with the Ninth Circuit decision in *Our Lady of Guadalupe School*, described immediately below.

Our Lady of Guadalupe School v. Morrissey-Berru

Our Lady of Guadalupe School, the lead case at the Supreme Court, is another Ninth Circuit decision, issued in April 2019. The plaintiff alleged that a Catholic school violated the federal Age Discrimination in Employment Act (ADEA) when it fired her. In a short, unpublished, and nonprecedential opinion, the Ninth Circuit concluded that the teacher was not a minister for purposes of the ministerial exception and that her ADEA claim could proceed. The court observed that the employee's "formal title of 'Teacher' was secular," that she "did not have any religious credential, training, or ministerial background," and that she "did not hold herself out to the public as a religious leader or minister." The school did not require its teachers to be Catholic and, according to the plaintiff, did not "require teachers to have background, training, or schooling in religion or Catholic pedagogy." The Ninth Circuit said that the teacher did have "significant religious responsibilities," including teaching religion classes, leading the students in prayer, helping to plan Mass once a month, and directing an annual Easter play. But, citing *Biel*, the court held that the job-duties factor, standing alone, is "not dispositive under *Hosanna-Tabor*'s framework."

Arguments at the Supreme Court

Both schools appealed the Ninth Circuit decisions to the Supreme Court and have filed combined briefs in advance of the May 11 oral argument. The schools argue that the ministerial exception should apply when "an employee of a religious organization performs important religious functions," claiming that *Hosanna-Tabor*'s fourth factor alone, focusing on job duties, should be enough to qualify a teacher as a minister. They ask the Court to adopt Justice Alito's concurring view in *Hosanna-Tabor* that the exception "should apply to 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." The schools assert that both before and after the Court's decision in *Hosanna-Tabor*, most federal courts of appeal focused on employees' job functions.

The schools claim that the teachers in the two combined cases meet this test because both "taught the Catholic religion to their students for hours every week." Although the schools argue that teaching "devotional classes" should be enough to show that an employee performs a religious function, they say that the teachers also "engaged in other forms of religious expression, worship, and ritual with their students," including joining their students in prayer, and for the teacher in *Our Lady of Guadalupe School*, leading some religious activities. Finally, the schools also assert that although both employees had the title of "teacher," rather than "minister," further factual context, including the schools' hiring practices and religious canons, showed that these titles were ministerial.

The United States Solicitor General has filed an amicus brief in support of the schools and will be participating in oral argument. (Although the Equal Employment Opportunity Commission (EEOC), the federal agency in charge of enforcing federal employment discrimination laws, filed an amicus brief in support of the teacher in the Ninth Circuit proceedings in *Biel*, the EEOC has not participated in briefing before the Supreme Court.) The United States' arguments largely echo those of the schools, saying that "the most important consideration" in applying the ministerial exception is whether an employee performs important religious functions. The Solicitor General acknowledges that the *Hosanna-Tabor* opinion noted *four* factors, but asserts that the three other considerations in that case should not prevent a court from "applying the ministerial exception to an employee who clearly serves an important religious function; they merely made [that] case an especially easy one." The United States also stresses that both

teachers in the combined cases "accept[ed] the responsibility to convey the Catholic Church's teachings to the next generation" and "agree[d] to model the Catholic faith."

In response, the teachers argue that the Supreme Court should use *Hosanna-Tabor*'s "multi-factor inquiry—starting with the trio of formalistic, objective indicia of ministerial status" embodied in the first three factors. They say that focusing on "formal indicia" such as title and religious training "promotes values of accountability and transparency," giving employees fair notice about the nature of their employment. The teachers recognize that religious duties are also a "critical" aspect of the inquiry, but assert that the Court should not adopt the religious functions inquiry as a "freestanding test."

The teachers contend that they should not be considered ministers under the factors outlined in *Hosanna-Tabor*. Among other arguments, the teachers point out that where an organization does not require employees to follow the employer's religion—as with the Catholic schools in these cases—it would make "no sense to call [a non-Catholic teacher] a Catholic minister." In characterizing their religious functions, they emphasize that they primarily performed "secular duties," arguing that the "sporadic" performance of religious activities should not transform teachers into ministers. Teaching a class on religion cannot automatically be sufficient, they say, given that "many teachers at wholly secular schools" also teach about religion in a way that does not involve "conveying" a church's message.

Considerations for Congress

Some Members of Congress have filed an amicus brief in support of the schools, suggesting congressional interest in the case. The scope of the ministerial exception has significant implications for enforcement of federal antidiscrimination laws. Although some of these laws already include carve-outs for certain religious organizations, the ministerial exception creates a broader immunity. For example, as the teachers and amici have pointed out in *Our Lady of Guadalupe School*, Title VII of the Civil Rights Act of 1964 and the ADA both state that they will not prevent religious organizations from employing "individuals of a particular religion," essentially allowing religious organizations to discriminate on the basis of religion. The ministerial exception, by contrast, allows religious organizations to fire certain employees for *any* reason, including (for example) racial discrimination unconnected to any religious motivation. One amicus group has argued that if the Court adopts the schools' preferred test for determining whether an employee is a minister, it would eliminate civil rights protections for "over one million health care workers currently employed at religious hospitals." The schools, however, call such predictions "fanciful," saying that although the prevailing test asks about religious functions, only a "handful" of cases to date have involved "religious healthcare defendants." And in their view, any employees who perform an "important religious function" *should* be included in the exception.

Because it is constitutionally grounded, the scope of the ministerial exception may not be altered by Congress. Accordingly, if the Supreme Court ruled for the schools and held that these teachers should be considered ministers, Congress could not diminish the scope of the ministerial exception if it disagreed with the Court's ruling. However, if the Court ruled for the teachers and if Congress wanted to expand or clarify the scope of *statutory* exceptions for religious organizations, it could amend those provisions to provide greater protection for religious organizations.

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