Our Lady of Guadalupe School v. Morrissey-Berru

591 U.S. ___, 140 S.Ct. 2049, ___ L.Ed.2d ___ (2020)

JUSTICE **ALITO** delivered the opinion of the Court.

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 (1952). Applying this principle, we held in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012) 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.*

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*. 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

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. . . . 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. As a result, she was her students' religion teacher.

Morrissey-Berru earned a B.A. in English Language Arts, with a minor in secondary education, and she holds a California teaching credential. While on the faculty at OLG, she took religious education courses at the school's request, and was expected to attend faculty prayer services.

Each year, Morrissey-Berru and OLG entered into an employment agreement that set out the school's "mission" and Morrissey-Berru's duties. The agreement stated that the school's mission was "to develop and promote a Catholic School Faith Community," and it informed Morrissey-Berru that "[a]ll [her] duties and responsibilities as a Teache[r were to] be performed within this overriding commitment." 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." Under the agreement, Morrissey-Berru was required to participate in "[s]chool liturgical activities, as requested,", 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." The agreement required compliance with the faculty handbook, which sets out similar expectations. The pastor of the parish, a Catholic priest, had to approve Morrissey-Berru's hiring each year. . . .

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, and then filed suit under the Age Discrimination in Employment Act of 1967 claiming that the school had demoted her and had failed to renew her contract so that it could replace her with a younger teacher. 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.

Invoking the "ministerial exception" that we recognized in *Hosanna-Tabor*, OLG successfully moved for summary judgment, but the Ninth Circuit reversed in a brief

opinion. The court acknowledged that Morrissey-Berru had "significant religious responsibilities" but reasoned that "an employee's duties alone are not dispositive under *Hosanna-Tabor*'s framework." 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." In the court's view, these "factors" outweighed the fact that she was invested with significant religious responsibilities. The court therefore held that Morrissey-Berru did not fall within the "ministerial exception." OLG filed a petition for certiorari, and we granted review.

[The second case involved Kristen Beil, whom the St. James Catholic School discharged after her breast-cancer diagnosis, on grounds of poor performance. Beil died of her disease, and her husband sued in behalf of her estate under the Americans with Disabilities Act. The Court reviewed the terms of Beil's employment and found that, as in the case of Morrisey-Berru, Beil's employer invested her with "significant religious responsibilities." —Eds.]

II

A

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters "'of faith and doctrine'" without government intrusion. *Hosanna-Tabor*. State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion.

The independence of religious institutions in matters of "faith and doctrine" is closely linked to independence in what we have termed "'matters of church government.'" This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission. And a component of this autonomy is the selection of the individuals who play certain key roles.

The "ministerial exception" was based on this insight. Under this rule, courts are bound to stay out of employment disputes involving those holding certain important

positions with churches and other religious institutions. The rule appears to have acquired the label "ministerial exception" because the individuals involved in pioneering cases were described as "ministers." Not all pre-*Hosanna-Tabor* decisions applying the exception involved "ministers" or even members of the clergy. But it is instructive to consider why a church's independence on matters "of faith and doctrine" requires the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities. Without that power, a wayward minister's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith. The ministerial exception was recognized to preserve a church's independent authority in such matters.

B

When the so-called ministerial exception finally reached this Court in *Hosanna-Tabor*, we unanimously recognized that the Religion Clauses foreclose certain employment discrimination claims brought against religious organizations. The constitutional foundation for our holding was the general principle of church autonomy to which we have already referred: independence in matters of faith and doctrine and in closely linked matters of internal government. The three prior decisions on which we primarily relied drew on this broad principle, and none was exclusively concerned with the selection or supervision of clergy. . . .

In addition to these precedents, we looked to the "background" against which "the First Amendment was adopted." *Hosanna-Tabor*. We noted that 16th-century British statutes had given the Crown the power to fill high "religious offices" and to control the exercise of religion in other ways, and we explained that the founding generation sought to prevent a repetition of these practices in our country. . . .

D

1

In determining whether a particular position falls within the *Hosanna-Tabor* exception, a variety of factors may be important. The circumstances that informed our decision in *Hosanna-Tabor* were relevant because of their relationship to Perich's "role in conveying the Church's message and carrying out its mission," *id*. but the other noted circumstances also shed light on that connection. In a denomination that uses the term "minister," conferring that title naturally suggests that the recipient has been given an important position of trust. In Perich's case, the

title that she was awarded and used demanded satisfaction of significant academic requirements and was conferred only after a formal approval process, *id*, and those circumstances also evidenced the importance attached to her role, *id.* But our recognition of the significance of those factors in Perich's case did not mean that they must be met—or even that they are necessarily important—in all other cases.

Take the question of the title "minister." Simply giving an employee the title of "minister" is not enough to justify the exception. And by the same token, since many religious traditions do not use the title "minister," it cannot be a necessary requirement. . . .

What matters, at bottom, is what an employee does. And implicit in our decision in *Hosanna-Tabor* 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." 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*. (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. . . .

2

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*. 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.

* * *

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.

#JUSTICE **THOMAS**, with whom JUSTICE **GORSUCH** joins, concurring.

[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* (Thomas, J., concurring).

This deference is necessary because, as the Court rightly observes, judges lack the requisite "understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." What qualifies as "ministerial" is an inherently theological question, and thus one that cannot be resolved by civil courts through legal analysis. See *Hosanna-Tabor* (Thomas, J., concurring); see also Memorial and Remonstrance Against Religious Assessments . . . Contrary to the dissent's claim, judges do not shirk their judicial duty or provide a mere "rubber stamp" when they defer to a religious organization's sincere beliefs (opinion of Sotomayor, J.). Rather, they heed the First Amendment, which "commands civil courts to decide [legal] disputes without resolving underlying controversies over religious doctrine." Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church (1969)

Moreover, because the application of the exception turns on religious beliefs, the duties that a given religious organization will deem "ministerial" are sure to vary. .

. . To avoid disadvantaging … minority faiths and interfering in "a religious group's right to shape its own faith and mission," *Hosanna-Tabor*, courts should defer to a religious organization's sincere determination that a position is "ministerial." *Id.* (Thomas, J., concurring).

The Court's decision today is a step in the right direction. The Court properly declines to consider whether an employee shares the religious organization's beliefs when determining whether that employee's position falls within the "ministerial exception," explaining that to "determin[e] whether a person is a 'co-religionist' ... would risk judicial entanglement in religious issues." But the same can be said about the broader inquiry whether an employee's position is "ministerial." This Court usually goes to great lengths to avoid governmental "entanglement" with religion, particularly in its Establishment Clause cases. See, *e.g.*, Lemon v. Kurtzman (1971). . . .

As this Court has explained, the Religion Clauses do not permit governmental "interfere[nce] with ... a religious group's right to shape its own faith and mission through its appointments." *Hosanna-Tabor*. To avoid such interference, we should defer to these groups' good-faith understandings of which individuals are charged with carrying out the organizations' religious missions. . . .

#JUSTICE **SOTOMAYOR**, with whom JUSTICE **GINSBURG** joins, dissenting.

Two employers fired their employees allegedly because one had breast cancer and the other was elderly. Purporting to rely on this Court's decision in *Hosanna-Tabor*, 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*'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.

I

A

Our pluralistic society requires religious entities to abide by generally applicable laws. *E.g.*, Employment Div., Dept. of Human Resources of Ore. v. Smith (1990). 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 (1982), deny nonprofit status to entities that discriminate because of race, Bob Jones Univ. v. United States (1983), require applicants for certain public benefits to register with Social Security numbers, Bowen v. Roy (1986), enforce child-labor protections, Prince v. Massachusetts (1944), and impose minimum-wage laws, Tony and Susan Alamo Foundation v. Secretary of Labor (1985).

Congress, however, has crafted exceptions to protect religious autonomy. Some antidiscrimination laws, like the Americans with Disabilities Act, permit a religious institution to consider religion when making employment decisions. Under that Act, a religious organization may also "require that all applicants and employees conform" to the entity's "religious tenets." Title VII further permits a school to prefer "hir[ing] and employ[ing]" people "of a particular religion" if its curriculum "propagat[es]" that religion. These statutory exceptions protect a religious entity's ability to make employment decisions—hiring or firing—for religious reasons.

The "ministerial exception," by contrast, is a judge-made doctrine. This Court first recognized it eight years ago in *Hosanna-Tabor*, concluding that the First Amendment categorically bars certain antidiscrimination suits by religious leaders against their religious employers. 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. That is, an employer need not cite or possess a religious reason at all; the ministerial exception even condones animus.

When this Court adopted the ministerial exception, it affirmed the holdings of virtually every federal appellate court that had embraced the doctrine. Those courts had long understood that the exception's stark departure from antidiscrimination law is narrow. Wary of the exception's "potential for abuse," federal courts treaded "case-by-case" in determining which employees are ministers exposed to discrimination without recourse. Scharon v. St. Luke's Episcopal Presbyterian Hospitals (1991). Thus, their analysis typically trained on whether the putative minister was a "spiritual leade[r]" within a congregation such that "he or she should

be considered clergy." Rayburn v. General Conference of Seventh-day Adventists (1985) . . . see also Hankins v. Lyght (2006) (Sotomayor, J., dissenting) . . . . That approach recognized that a religious entity's ability to choose its faith leaders—rabbis, priests, nuns, imams, ministers, to name a few—should be free from government interference, but that generally applicable laws still protected most employees.

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 (1993), 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. In Dole v. Shenandoah Baptist Church (1990), 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." Similar examples abound. See, *e.g.*, EEOC v. Mississippi College (1980) (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 (1986) (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* ("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 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 church-wide leaders. To be sure, the Court stated that the "ministerial exception is not limited to the head of a religious congregation." 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*.

This analysis is context-specific. It necessarily turns on, among other things, the structure of the religious organization at issue. Put another way (and as the Court repeats throughout today's opinion), *Hosanna-Tabor* declined to adopt a "rigid

formula for deciding when an employee qualifies as a minister." Rather, *Hosanna-Tabor* focused on four "circumstances" to determine whether a fourth-grade teacher, Cheryl Perich, was employed at a Lutheran school as a "minister": (1) "the formal title given [her] by the Church," (2) "the substance reflected in that title," (3) "her own use of that title," and (4) "the important religious functions she performed for the Church." Confirming that the ministerial exception applies to a circumscribed sub-category of faith leaders, the Court analyzed those four "factors," to situate Perich as a minister within the Lutheran Church's structure.

B . . .

Hosanna-Tabor's well-rounded approach ensured that a church could not categorically disregard generally applicable antidiscrimination laws for nonreligious reasons. By analyzing objective and easily discernable markers like titles, training, and public-facing conduct, *Hosanna-Tabor* charted a way to separate leaders who "personify" a church's "beliefs" or who "minister to the faithful" from individuals who may simply relay religious tenets. This balanced First Amendment concerns of state-church entanglement while avoiding an overbroad carve-out from employment protections.

II

Until today, no court had held that the ministerial exception applies with disputed facts like these and to lay teachers like respondents . . . .

Only by rewriting *Hosanna-Tabor* does the Court reach a different result. The Court starts with an unremarkable view: that *Hosanna-Tabor*'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." True enough. One can easily imagine religions incomparable to those at issue in *Hosanna-Tabor* and here. But then the Court recasts *Hosanna-Tabor* 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* (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."

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." (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.

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 and all but abandons judicial review. . . .

Today's decision thus invites the "potential for abuse" against which circuit courts have long warned. *Scharon*. Nevermind that the Court renders almost all of the Court's opinion in *Hosanna-Tabor* 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* (or at least its majority opinion) condones such judicial abdication.

* * *

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. . . . Other sources tally over a hundred thousand secular teachers whose rights are at risk. . . . 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," 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.

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 (2020). 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* to fit the result reached today reflects the Court's capacity to cabin the consequences tomorrow.

I respectfully dissent.