



To: Catholic school, college, and diocesan leaders
From: Patrick J. Reilly, President
Re: Supreme Court's *Our Lady of Guadalupe* ruling on ministerial exception

The Cardinal Newman Society is working on detailed guidance to help Catholic schools and colleges strengthen their ability to claim the “ministerial exception” in light of the July 8th Supreme Court ruling in *Our Lady of Guadalupe School v. Agnes Morrissey-Berru* (combined with *St. James School v. Darryl Biel, as Personal Representative of the Estate of Kristen Biel*). The following summarizes our current understanding of the ruling. Educators should consult their attorneys for professional legal advice.

Bottom Line: The ministerial exception can help protect Catholic education, but only if employee standards clearly require fidelity and religious duties for all positions and across the full curriculum. Institutions that compromise Catholic identity and have weak policies risk being left unprotected.

Ruling: “The First Amendment’s Religion Clauses foreclose the adjudication of... employment-discrimination claims” by two Catholic elementary school teachers who taught several courses including a religion course. They are within the “ministerial exception” as affirmed by the Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012).

Focus on duties: The Court rejects the Ninth Circuit’s arguments that an employee must be a religious “leader” and that “an employee’s duties alone are not dispositive under *Hosanna-Tabor*’s framework.” Justice Alito writes, “What matters, at bottom, is what an employee does.

...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.”

No strict test: The Court rejects any “rigid formula” for applying the ministerial exception. *Hosanna-Tabor* considered four factors: the employee’s title, training, public standing, and job duties. But *Guadalupe* finds that “a variety of factors may be important” and clarifies that the *Hosanna-Tabor* ruling “did not mean that [the four factors in that case] must be met—or even that they are necessarily important—in all other cases.” The Court finds that three of the *Hosanna-Tabor* factors are not decisive in this case: neither teacher is titled “minister” (although the Court does note that the Archdiocese of Los Angeles describes all teachers as “catechists”), minimal prior religious training (although the Court notes employer-sponsored training), and one teacher’s failure to “hold herself out to the public as a religious leader or minister.”

Other factors: The Court notes the following factors (in no particular order): employment agreement and handbook requiring religious instruction and witness, taught many subjects including religion, taught religion daily using Catholic catechism textbook, tested students on religion, prepared and accompanied students for Mass and Confession, selected students for Mass readings and bringing gifts at Mass, took students on annual trip to cathedral, prayed with students daily, taught prayers, took religious education courses at school’s request, attended

Catholic education conference, attended faculty prayer services, directed Passion play, taught in fidelity to Catholic teachings, infused classes with Catholic values and teachings, included religious displays in the classroom, and performance reviews according to religious standards.

Deference: The Court regards the religious employer or church's determination of what constitutes religious duties to be "important" to its application of the ministerial exception.

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.

In a nod to Catholic Church authority, the Court notes:

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).

Scope of exception: The Court's ruling rests on whether employee is a "teacher of religion." Schools will need to demonstrate that all teachers (not only those who teach designated religion courses) and non-teachers (including school administrators, coaches, guidance counselors, and support staff) are truly teaching religion or have other essential religious functions. The Newman Society is developing additional guidance on this point.

Limitations: Employees not covered by the ministerial exception are still subject to employment discrimination claims, including those under the *Bostock* ruling regarding homosexuality and transgender status. The ministerial exception does not protect against discrimination claims by students, parents and others that are unrelated to employment (including Title IX claims).

Recommendations:

Strengthen Catholic identity: Firmly ground all employment policies in Catholic teaching, require all teachers to include Catholic instruction across the curriculum, and require religious duties of non-teaching employees. Require all employees to evangelize in fidelity to Catholic teaching and the mission of Catholic education. Consider all factors cited above to improve ministerial exception claims. Strong Catholic identity overall (faith integrated across curriculum, sacraments, prayer, student activities, etc.) will help increase employees' ministerial activity.

Nondiscrimination policies: Avoid listing any protected categories, but especially do not include sexual orientation or gender identity. Declare your legal right as a religious entity to make decisions based on religion; do not promise nondiscrimination on "religion." Develop policies and arbitration for resolving discrimination claims and other disputes with ministerial employees.

Employee benefits: Check employee benefits to ensure fidelity to Catholic moral teaching.

Catholic Identity Standards Project: The Newman Society is working on policy standards to help Catholic schools and colleges protect and strengthen Catholic identity. This work depends on the assistance of a large number of expert reviewers. If you would like to assist, please contact Michael Kenney, director of Catholic Identity Standards Project, at mkenney@cardinalnewmansociety.org.