

OUR LADY OF GUADALUPE SCHOOL V. MORRISSEY-BERRU, 591 U.S. ____ (2020)

by Justice Samuel Alito, Opinion of the Court

Note: This is only a part of the majority opinion.

... In determining whether a particular position falls within the Hosanna-Tabor exception, a variety of factors may be important.¹⁰ 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.*, at 192, 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.*, at 191, and those circumstances also evidenced the importance attached to her role, *ibid.* 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. Requiring the use of the title would constitute impermissible discrimination,

and this problem cannot be solved simply by including positions that are thought to be the counterparts of a “minister,” such as priests, nuns, rabbis, and imams. See Brief for Respondents 21. Nuns are not the same as Protestant ministers. A brief submitted by Jewish organizations makes the point that “Judaism has many ‘ministers,’” that is, “the term ‘minister’ encompasses an extensive breadth of religious functionaries in Judaism.”¹¹ For Muslims, “an inquiry into whether imams or other leaders bear a title equivalent to ‘minister’ can present a troubling choice between denying a central pillar of Islam—*i.e.*, the equality of all believers—and risking loss of ministerial exception protections.”¹²

If titles were all-important, courts would have to decide which titles count and which do not, and it is hard to see how that could be done without looking behind the titles to what the positions actually entail. Moreover, attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.

For related reasons, the academic requirements of a position may show that the church in question regards the position as having an important responsibility in elucidating or teaching the tenets of the faith. Presumably the purpose of such requirements is to make sure that the person holding the position understands the faith and can explain it accurately and effectively. But

For the entire decision, visit https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf.

insisting in every case on rigid academic requirements could have a distorting effect. This is certainly true with respect to teachers. Teaching children in an elementary school does not demand the same formal religious education as teaching theology to divinity students. Elementary school teachers often teach secular subjects in which they have little if any special training. In addition, religious traditions may differ in the degree of formal religious training thought to be needed in order to teach. See, e.g., Brief for Ethics and Religious Liberty Commission of the Southern Baptist Convention et al. as *Amici Curiae* 12 (“many Protestant groups have historically rejected any requirement of formal theological training”). In short, these circumstances, while instructive in *Hosanna-Tabor*, are not inflexible requirements and may have far less significance in some cases.

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.” 565 U.S., at 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 (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).

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 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 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 Many such schools expressly set themselves apart from public schools that they believe do not reflect their values.¹⁶

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 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 “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

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 This precept is traced to the Prophet Muhammad, who proclaimed that “ ‘[t]he pursuit of knowledge is incumbent on every Muslim.’ ”²¹ “[T]he development of independent private Islamic schools ha[s] become an important part of the picture of Muslim

education in America.”²²

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

Seventh-day Adventists “trace the importance of education back to the Garden of Eden.”²⁴ 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

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.

ENDNOTES

10. In considering the circumstances of any given case, courts must take care to avoid “resolving underlying controversies over religious doctrine.” *Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969); *ibid.* (“First Amendment values are plainly jeopardized when . . . litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice”); see also *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696, 715, n. 8 (1976) (“It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own” (quoting *Watson v. Jones*, 13 Wall. 679, 729 (1872))); cf. *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714–716 (1981).

11. Brief for Colpa et al. as *Amici Curiae* i, 3 (quotation modified).

12. Brief for Asma T. Uddin as *Amicus Curiae* 2.

13. Old Deluder Satan Act of 1647, in *The Laws and Liberties of Massachusetts* 47 (M. Farrand ed. 1929).

14. *Ibid.*

15. See P. Parsons, *Inside America’s Christian Schools* (1987); see also Association of Christian Schools International, *Why Christian Schooling?*, <https://www.acsi.org/membership/why-christian-schooling>; Association of Classical Christian Schools, *What is CCE?*, <https://classicalchristian.org/what-is-cce/?v=a44707111a05>.

16. R. Dreher, *The Benedict Option* 146, 155, 160 (2017); see, e.g., J. Ekeland & B. Walton, *Discover Christian Schools: Ten Differences*, https://discoverchristianschools.com/wp-content/uploads/2019/02/DCS_TenDifferences.pdf.

17. See Deuteronomy 6:7, 11:19.

18. Brief for General Conference of Seventh-day Adventists et al. as *Amici Curiae* 7–8 (quoting Maimonides, *Mishne Torah*, *Hilkhot Talmud Torah* 1:2; 2:1, 3).

19. Brief for Church of God in Christ, Inc., et al. as *Amici Curiae* 15.

20. Afsaruddin, *Muslim Views on Education: Parameters, Purview, and Possibilities*, 44 *J. Cath. Legal Studies* 143, 143–144 (2005).

21. *Id.*, at 143.

22. Haddad & Smith, *Introduction: The Challenge of Islamic Education in North America*, in *Educating the Muslims of America* 3, 6, 11 (Y. Haddad, F. Senzai, & J. Smith eds. 2009).

23. Berrett, *Church Educational System (CES) in 1 Encyclopedia of Mormonism* 274, 275 (D. Ludlow ed. 1992).

24. Brief for General Conference of Seventh-day Adventists et al. as *Amici Curiae* 9.

25. Seventh-day Adventist Church, *About Us*, <https://adventisteducation.org/abt.html>.