1. **West Virginia State Bd. of Educ. v. Barnette,**[**319 U.S. 624**](https://supreme.justia.com/cases/federal/us/319/624/)**(1943)**

Προσβάσιμη σε:

[West Virginia State Bd. of Educ. v. Barnette :: 319 U.S. 624 (1943) :: Justia US Supreme Court Center](https://supreme.justia.com/cases/federal/us/319/624/)

Αποσπάσματα:

Από την Περίληψη (Syllabus)

2. The action of a State in making it compulsory for children in the public schools to salute the flag and pledge allegiance -- by extending the right arm, palm upward, and declaring, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all" -- violates the First and Fourteenth Amendments. P. [319 U. S. 642](https://supreme.justia.com/cases/federal/us/319/624/case.html#642).

So held as applied to children who were expelled for refusal to comply, and whose absence thereby became "unlawful," subjecting them and their parents or guardians to punishment.

3. That those who refused compliance did so on religious grounds does not control the decision of this question, and it is unnecessary to inquire into the sincerity of their views. P. [319 U. S. 634](https://supreme.justia.com/cases/federal/us/319/624/case.html#634).

4. Under the Federal Constitution, compulsion as here employed is not a permissible means of achieving "national unity." P. [319 U. S. 640](https://supreme.justia.com/cases/federal/us/319/624/case.html#640).

Από το κείμενο:

1. It was said that the flag salute controversy confronted the Court with

"the problem which Lincoln cast in memorable dilemma: 'Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?', and that the answer must be in favor of strength. …"

We think these issues may be examined free of pressure or restraint growing out of such considerations.

It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the State to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favor of those in authority, and would require us to override every liberty thought to weaken or delay execution of their policies.

Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and, by making us feel safe to live under it, makes for its better support. Without promise of a limiting Bill of Rights, it is

Page 319 U. S. 637

doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or, failing that, to weaken, the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

2. It was also considered in the Gobitis case that functions of educational officers in States, counties and school districts were such that to interfere with their authority "would in effect make us the school board for the country." Id. at [310 U. S. 598](https://supreme.justia.com/cases/federal/us/310/586/case.html#598).

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Such Boards are numerous, and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account.

Page 319 U. S. 638

The action of Congress in making flag observance voluntary [[Footnote 17](https://supreme.justia.com/cases/federal/us/319/624/%22%20%5Cl%20%22F17)] and respecting the conscience of the objector in a matter so vital as raising the Army [[Footnote 18](https://supreme.justia.com/cases/federal/us/319/624/%22%20%5Cl%20%22F18)] contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants, as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

3. The Gobitis opinion reasoned that this is a field "where courts possess no marked, and certainly no controlling, competence," that it is committed to the legislatures, as well as the courts, to guard cherished liberties, and that it is constitutionally appropriate to

"fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies, rather than to transfer such a contest to the judicial arena,"

since all the "effective means of inducing political changes are left free." Id. at [310 U. S. 597](https://supreme.justia.com/cases/federal/us/310/586/case.html#597)-598, [310 U. S. 600](https://supreme.justia.com/cases/federal/us/310/586/case.html#600).

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Page 319 U. S. 639

In weighing arguments of the parties, it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that, while it is the Fourteenth Amendment which bears directly upon the State, it is the more specific limiting principles of the First Amendment that finally govern this case.

Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls, and only the mildest supervision

Page 319 U. S. 640

over men's affairs. We must transplant these rights to a soil in which the laissez-faire concept or principle of noninterference has withered, at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls. These changed conditions often deprive precedents of reliability, and cast us more than we would choose upon our own judgment. But we act in these matters not by authority of our competence, but by force of our commissions. We cannot, because of modest estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

4. Lastly, and this is the very heart of the Gobitis opinion, it reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment," and hence reaches the conclusion that such compulsory measures toward "national unity" are constitutional. Id. at [310 U. S. 595](https://supreme.justia.com/cases/federal/us/310/586/case.html#595). Upon the verity of this assumption depends our answer in this case.

National unity, as an end which officials may foster by persuasion and example, is not in question. The problem is whether, under our Constitution, compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. Nationalism is a relatively recent phenomenon, but, at other times and places, the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity.

Page 319 U. S. 641

As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

The case is made difficult not because the principles of its decision are obscure, but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism

Page 319 U. S. 642

and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. [[Footnote 19](https://supreme.justia.com/cases/federal/us/319/624/%22%20%5Cl%20%22F19)]

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

1. **Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S. \_\_\_ (2020)**

Προσβάσιμη σε [Our Lady of Guadalupe School v. Morrissey-Berru :: 591 U.S. \_\_\_ (2020) :: Justia US Supreme Court Center](https://supreme.justia.com/cases/federal/us/591/19-267/)

Περίληψη (Syllabus)

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](https://supreme.justia.com/cases/federal/us/344/94/), 116. Applying this principle, this Court held in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, [565 U.S. 171](https://supreme.justia.com/cases/federal/us/565/171/), 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. Adopting the so-called “ministerial exception” to laws governing the employment relationship between a religious institution and certain key employees, the Court found relevant 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.

In these cases, two elementary school teachers at Roman Catholic schools in the Archdiocese of Los Angeles had teaching responsibilities similar to Perich’s. Agnes Morrissey-Berru taught at Our Lady of Guadalupe School (OLG), and Kristen Biel taught at St. James School. Both were employed under nearly identical agreements that set out the schools’ mission to develop and promote a Catholic School faith community; imposed commitments regarding religious instruction, worship, and personal modeling of the faith; and explained that teachers’ performance would be reviewed on those bases. Each was also required to comply with her school’s faculty handbook, which set out similar expectations. Each taught religion in the classroom, worshipped with her students, prayed with her students, and had her performance measured on religious bases.

Both teachers sued their schools after their employment was terminated. Morrissey-Berru claimed that OLG had demoted her and had failed to renew her contract in order to replace her with a younger teacher in violation of the Age Discrimination in Employment Act of 1967. OLG invoked Hosanna-Tabor’s “ministerial exception” and successfully moved for summary judgment, but the Ninth Circuit reversed, holding that Morrissey-Berru did not fall within the exception because she did not have the formal title of “minister,” had limited formal religious training, and did not hold herself out publicly as a religious leader. Biel alleged that St. James discharged her because she had requested a leave of absence to obtain breast cancer treatment. Like OLG, St. James obtained summary judgment under the “ministerial exception.” But the Ninth Circuit reversed, reasoning that Biel lacked Perich’s credentials, religious training, and ministerial background.

Held: The First Amendment’s Religion Clauses foreclose the adjudication of Morrissey-Berru’s and Biel’s employment-discrimination claims. Pp. 10–27.

(a) The independence of religious institutions in matters of “faith and doctrine” is closely linked to independence in what the Court has termed “ ‘matters of church government.’ ” Hosanna-Tabor, 565 U. S., at 186. For this reason, courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions. Pp. 10–11.

(b) When the “ministerial exception” reached this Court in Hosanna-Tabor, the Court looked to precedent and the “background” against which “the First Amendment was adopted,” 565 U. S., at 183, and unanimously recognized that the Religion Clauses foreclose certain employment-discrimination claims brought against religious organizations, id., at 188. Pp. 11–14.

(c) In Hosanna-Tabor, the Court applied the “ministerial exception” but declined “to adopt a rigid formula for deciding when an employee qualifies as a minister.” 565 U. S., at 190. Instead, the Court identified four relevant circumstances of Perich’s employment at an Evangelical Lutheran school. First, Perich’s church had given her the title of “minister, with a role distinct from that of most of its members.” Id., at 191. Second, her position “reflected a significant degree of religious training followed by a formal process of commissioning.” Ibid. Third, she “held herself out as a minister of the Church” and claimed certain tax benefits. Id., at 191–192. Fourth, her “job duties reflected a role in conveying the Church’s message and carrying out its mission.” Id., at 192. Pp. 14–16.

(d) A variety of factors may be important in determining whether a particular position falls within the ministerial exception. The circumstances that informed the Court’s 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.” 565 U. S., at 192. But the recognition of the significance of those factors in Perich’s case did not mean that they must be met in all other cases. What matters is what an employee does. Implicit in the Hosanna-Tabor decision 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 a private religious school’s mission. Pp. 16–21.

(e) Applying this understanding of the Religion Clauses here, it is apparent that Morrissey-Berru and Biel qualify for the exception recognized in Hosanna-Tabor. There is abundant record evidence that they both performed vital religious duties, such as educating their students in the Catholic faith and guiding their students to live their lives in accordance with that faith. Their titles did not include the term “minister” and they had less formal religious training than Perich, but their core responsibilities were essentially the same. And their schools expressly saw them as playing a vital role in carrying out the church’s mission. A religious institution’s explanation of the role of its employees in the life of the religion in question is important. Pp. 21–22.

(f) The Ninth Circuit mistakenly treated the circumstances the Court found relevant in Hosanna-Tabor as a checklist of items to be assessed and weighed against each other. That rigid test produced a distorted analysis. First, it invested undue significance in the fact that Morrissey-Berru and Biel did not have clerical titles. Second, it assigned too much weight to the fact that Morrissey-Berru and Biel had less formal religious schooling that Perich. Third, the St. James panel inappropriately diminished the significance of Biel’s duties. Respondents would make Hosanna-Tabor’s governing test even more rigid. And they go further astray in suggesting that an employee can never come within the Hosanna-Tabor exception unless the employee is a “practicing” member of the religion with which the employer is associated. Deciding such questions risks judicial entanglement in religious issues. Pp. 22–27.

No. 19–267, 769 Fed. Appx. 460; No. 19–348, 911 F.3d 603, reversed and remanded.

Alito, J., delivered the opinion of the Court, in which Roberts, C. J., and Thomas, Breyer, Kagan, Gorsuch, and Kavanaugh, JJ., joined. Thomas, J., filed a concurring opinion, in which Gorsuch, J., joined. Sotomayor, J., filed a dissenting opinion, in which Ginsburg, J., joined.

Μειοψηφία:

ustice 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 Evangelical Lutheran Church and School v. EEOC, [565 U.S. 171](https://supreme.justia.com/cases/federal/us/565/171/) (2012), 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, [494 U.S. 872](https://supreme.justia.com/cases/federal/us/494/872/), 879–882 (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, [455 U.S. 252](https://supreme.justia.com/cases/federal/us/455/252/), 256–261 (1982), deny nonprofit status to entities that discriminate because of race, Bob Jones Univ. v. United States, [461 U.S. 574](https://supreme.justia.com/cases/federal/us/461/574/), 603–605 (1983), require applicants for certain public benefits to register with Social Security numbers, Bowen v. Roy, [476 U.S. 693](https://supreme.justia.com/cases/federal/us/476/693/), 699–701 (1986), enforce child-labor protections, Prince v. Massachusetts, [321 U.S. 158](https://supreme.justia.com/cases/federal/us/321/158/), 166–170 (1944), and impose minimum-wage laws, Tony and Susan Alamo Foundation v. Secretary of Labor, [471 U.S. 290](https://supreme.justia.com/cases/federal/us/471/290/), 303–306 (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. 42 U. S. C. §12113(d)(1). Under that Act, a religious organization may also “require that all applicants and employees conform” to the entity’s “religious tenets.” §12113(d)(2). 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. §2000e–2(e); see also §2000e–1(a). 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. 565 U. S., at 188–190. 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. 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. Id., at 188, and n. 2. 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, 929 F.2d 360, 363, n. 3 (CA8 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, 772 F.2d 1164, 1168–1169 (CA4 1985) (internal quotation marks omitted); see also Hankins v. Lyght, [441 F.3d 96](https://law.justia.com/cases/federal/appellate-courts/F3/441/96/593530/), 117–118, and n. 13 (CA2 2006) (Sotomayor, J., dissenting) (cataloging Circuit consensus). 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, [7 F.3d 324](https://law.justia.com/cases/federal/appellate-courts/F3/7/324/479511/) (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. Id., at 331. In Dole v. Shenandoah Baptist Church, 899 F.2d 1389 (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.” Id., at 1396. Similar examples abound. See, e.g., EEOC v. Mississippi College, 626 F.2d 477, 479, 485 (CA5 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, 781 F.2d 1362, 1369–1370 (CA9 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, 772 F. 2d, at 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 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 (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. 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.[[1](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F1)]

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.” 565 U. S., at 190. 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.” Id., at 190, 192. Confirming that the ministerial exception applies to a circumscribed sub-category of faith leaders, the Court analyzed those four “factors,” ante, at 16, to situate Perich as a minister within the Lutheran Church’s structure.

B

Those considerations showed that Perich had a unique leadership role within her church. First, the Court noted that the school had “held Perich out as a minister, with a role distinct from that of most of its members.” 565 U. S., at 191. When the school fired her, Perich was in the role of a “called teacher,” as opposed to her prior position of “lay teacher.” Id., at 178. When the church “extended [Perich] a call,” it also “issued her a ‘diploma of vocation’ according her the title ‘Minister of Religion, Commissioned.’ ” Id., at 191. And “[i]n a supplement to the diploma, the congregation undertook to periodically review Perich’s ‘skills of ministry’ and ‘ministerial responsibilities,’ and to provide for her ‘continuing education as a professional person in the ministry of the Gospel.’ ” Ibid.

Second, the Court observed that Perich’s job title “reflected a significant degree of religious training followed by a formal process of commissioning.” Ibid. Further distinguishing Perich from the rest of her faith community, the Court explained that Perich’s “eligib[ility] to become a commissioned minister” turned on her completion of a six-year process requiring “eight college-level courses in subjects including biblical interpretation, church doctrine, and the ministry of the Lutheran teacher,” obtaining “the endorsement of her local Synod district,” and passing “an oral examination by a faculty committee at a Lutheran college.” Ibid.

Third, the Court observed that Perich “held herself out as a minister of the Church by accepting the formal call to religious service” and “in other ways as well.” Ibid. Unlike the lay teachers, for example, Perich claimed a tax exemption available only to employees earning compensation “in the exercise of the ministry.” Id., at 192 (internal quotation marks omitted).

Finally, the Court looked to function, finding that Perich’s “job duties reflected a role in conveying the Church’s message and carrying out its mission” notably different from other members of the church. Id., at 192; see also id., at 188, 191. Perich was “expressly charged” with “lead[ing] others” in their faith and did so by teaching “her students religion four days a week” and “le[ading] them in prayer three times a day.” Id., at 192 (internal quotation marks omitted). About twice a year, Perich led the school-wide chapel service by “choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible.” Ibid. Perich also “led” her students “in a brief devotional exercise each morning.” Ibid. The Court thus observed that, “[a]s a source of religious instruction, Perich performed an important role in transmitting the Lutheran faith to the next generation.” Ibid.

Because this inquiry is holistic, the Court warned that it is “wrong” to “say that an employee’s title does not matter.” Id., at 193. The Court was careful not to give religious functions undue weight in identifying church leaders. And the “amount of time an employee spends on particular activities,” the Court added, “is relevant in assessing that employee’s status” when measured against “the nature of the religious functions performed and the other considerations,” like titles, training, and how the employee held herself out to the public. Id., at 194.

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. Id., at 188, 195.[[2](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F2)] 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 lay teachers like respondents, let alone at the summary-judgment stage. See 911 F.3d 603, 610 (CA9 2018) (case below in No. 19–348); see also supra, at 3–4.

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.” Ante, at 16–17. 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, 565 U. S., at 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 18.

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 22; see also ante, at 1–2 (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](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F3)]

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 22, and all but abandons judicial review. Although today’s decision is limited to certain “teachers of religion,” ante, at 22–23, its reasoning risks rendering almost every Catholic parishioner and parent in the Archdiocese of Los Angeles a Catholic minister.[[4](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F4)] 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.

Today’s decision thus invites the “potential for abuse” against which circuit courts have long warned. Scharon, 929 F. 2d, at 363, n. 3. 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.

III

Faithfully applying Hosanna-Tabor’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](https://supreme.justia.com/cases/federal/us/550/372/), 378 (2007) (internal quotation marks omitted).[[5](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F5)]

A

1

Respondent Kristen Biel was a teacher at St. James School, a Catholic school in the Archdiocese of Los Angeles.[[6](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F6)] Biel initially served as a substitute teacher, teaching first grade two days a week. App. 248–249. At the end of the 2013 school year, the school hired Biel as a full-time fifth-grade teacher. 911 F. 3d, at 605; App. 250.

Biel’s employment contract identified her position as just that: “Grade 5 Teacher.” App. to Pet. for Cert. in No. 19–348, p. 103a; App. 328–329. The contract referred to Biel throughout as “teacher,” and directed her to the benefits guide for “Lay Employees.” App. to Pet. for Cert. in No. 19–348, at 105a; App. 320, 325, 327–329. The contract also stated that Biel would work ‘‘within [St. James’s] overriding commitment’’ to church ‘‘doctrines, laws, and norms’’ and would ‘‘model, teach, and promote behavior in conformity to the teaching of the Roman Catholic Church.’’ 911 F. 3d, at 605 (internal quotation marks omitted). According to the faculty handbook, all faculty (religion teachers or not) ‘‘participate in the Church’s mission’’ of providing ‘‘quality Catholic education to . . . students, educating them in academic areas and in . . . Catholic faith and values.” Id., at 605–606 (internal quotation marks omitted). The faculty handbook further instructs teachers to follow California’s public-school curricular requirements. Id., at 606.

Although St. James School “recommended” that teachers be Catholic, the school did not require it. App. 289. Nor did the school require teachers to have experience, training, or schooling in religious pedagogy. 911 F. 3d, at 605. Biel had no such credentials when the school hired her, as she had received her bachelor’s degree in liberal arts and a teaching credential from a public university. Ibid. Even after she began working at St. James School, Biel’s “only” training in religious pedagogy was “a single half-day conference where topics ranged from the incorporation of religious themes into lesson plans to techniques for teaching art classes.” Ibid.; see also App. 242–244, 261–263.

Biel taught her fifth-grade class all its academic subjects, including English, spelling, reading, literature, mathematics, science, and social studies. 911 F. 3d, at 605; Excerpts of Record in No. 17–55180 (CA9), p. 588. This also involved a standard religion curriculum, which Biel taught for about 30 minutes four days a week. 911 F. 3d, at 605. When teaching religion, Biel followed instructions in a workbook that the school administration had prescribed. Ibid.; App. 254–255. Twice a day, Biel would pray with her students, but she “did not lead them.” 911 F. 3d, at 605. Rather, the class had student “prayer leaders” and “[t]he prayers that were said in the classroom were said mostly by the students.” App to Pet. for Cert. in No. 19–348, at 93a. As Biel explained, she “didn’t need to teach” her students any prayers, either, because “[t]hey already kn[e]w them” and “had prayer leaders.” Ibid.; contra, ante, at 24–25 (asserting without citation that Biel “taught [her students] prayers”). Once a month, Biel joined her students in the school’s multipurpose room for mass, which were always officiated by a Catholic priest or a nun. App. 258. The record does not show that Biel taught her students what to do at mass. Ibid. Rather, Biel’s “sole responsibility” during liturgy was “to keep her class quiet and orderly.” 911 F. 3d, at 605; App. 258–259.

Near the end of the school year, Biel learned that she had breast cancer and would need surgery and chemotherapy. Biel informed the school and explained that her condition would require her to take time off from work. 911 F. 3d, at 606; App. 266–269, 309. The school responded that she would not be welcomed back. 911 F. 3d, at 606; App. 270–273. At no point has St. James School suggested a religious reason for terminating Biel’s employment.

2

In 1998, after a 20-year career in newspaper advertising and copywriting, respondent Agnes Deirdre Morrissey-Berru began working as a substitute teacher at Our Lady of Guadalupe School, another Catholic school in Southern California. App. to Pet. for Cert. in No. 19–267, p. 80a; App. 74. More recently, she taught fifth and sixth grade full time. App. 73–75.

Each year, Morrissey-Berru signed an employment contract with the school. Like Biel’s contracts, these agreements referred to Morrissey-Berru as “Teacher” and directed her to the benefits guide for “Lay Employees.” App. 91–100, 127–164; App. to Pet. for Cert. in No. 19–267, at 32a–42a. Notably, the faculty handbook promised not to discriminate on the basis of any protected characteristic, including “race,” “sex,” “disability,” or “age.” Record Excerpts in No. 17–56624, p. 648.

“At no time” during her employment did Morrissey-Berru “feel God was leading [her] to serve in the ministry,” nor did she “believe [she] was accepting a formal . . . call to religious service by working at Our Lady of Guadalupe as a fifth and sixth grade teacher.” App. to Brief in Opposition in No. 19–267, p. 2a. Morrissey-Berru, in fact, is not a practicing Catholic. Ibid. Although Our Lady of Guadalupe School “preferred” its teachers to be Catholic, there is a factual dispute whether the school insisted on that prerequisite without exception (and thus, for summary-judgment purposes, the Court must assume there was no absolute requirement). App. 110–111; Scott, 550 U. S., at 378. Nor did the school require teachers to have any background or training in Catholic pedagogy (or even religion). Morrissey-Berru had no such credentials when the school hired her, as she held a bachelor’s degree in English language arts with a minor in secondary education. App. 73–74. Many years after Morrissey-Berru had begun teaching at the school, though, the school did ask her to attend a catechist course on the history of the Catholic Church. 769 Fed. Appx. 460, 461 (CA9 2019) (per curiam) (opinion below in No. 19–267); App. to Pet. for Cert. in No. 19–267, at 85a. The record does not disclose whether Morrissey-Berru ever completed the full catechism-certification program, and in fact suggests that she did not. E.g., Excerpts of Record in No. 17–56624 (CA9), pp. 41–42, 44–45, 67.

Morrissey-Berru taught her class a range of subjects: reading, writing, math, grammar, vocabulary, science, social studies, and religion. App. 75. When teaching religion, Morrissey-Berru followed the contents of a preselected workbook. App. 79–80. Morrissey-Berru also “led her students in daily prayer” and assisted with planning a monthly mass. 769 Fed. Appx., at 461. But she did not recall “lead[ing her] students in any devotional exercises.” App. to Pet. for Cert. in No. 19–267, at 89a.

In 2014, when Morrissey-Berru was in her sixties, the school did not renew Morrissey-Berru’s contract. Id., at 30a–31a. Like St. James, Our Lady of Guadalupe School has neither cited nor asserted a religious reason for the termination.

B

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 3–4; 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 17. 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). But that freedom of choice should carry consequences in litigation. And here, like the faith at issue in Hosanna-Tabor, 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 23, 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 4, 24. For one thing, the Court discusses evidence from only Morrissey-Berru’s case (not Biel’s).[[7](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F7)] 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.

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; 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. Nor does it matter that all teachers signed contracts agreeing to model and impart Catholic values. This component of the Hosanna-Tabor 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’s inquiry, which seriously undermines the schools’ cases.

That leaves only the fourth consideration in Hosanna-Tabor: 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; see also supra, at 3–4. 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. 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. 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, 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’s description of a “minister to the faithful.” 565 U. S., at 189.

Nevertheless, the Court insists that the teachers are ministers because “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.” Ante, at 18. But teaching religion in school alone cannot dictate ministerial status. If it did, then Hosanna-Tabor 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.” Brief for EEOC as Amicus Curiae in No. 17–55180 (CA9), p. 21. Rather, “the Court made clear in Hosanna-Tabor that context matters.” Ibid. Indeed.[[8](https://supreme.justia.com/cases/federal/us/591/19-267/%22%20%5Cl%20%22F8)]

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. 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 25–26. 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.

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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 21–22, 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, 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 to fit the result reached today reflects the Court’s capacity to cabin the consequences tomorrow.

I respectfully dissent.