# Government has no business in controlling who teaches the Faith

The pandemic has affected us all, but it hasn't changed one of the most carefully considered decisions Catholic families make: choosing a school for their children. The school you choose will provide spiritual formation and sacramental preparation, create community and also instill academic standards and infuse morality and discipline. It's no wonder that, around the country, families make deep financial sacrifices to send their children to private Catholic schools to avoid the rapidly growing trends to secularize education and adopt progressive views on sexual morality.

However, last week, the Supreme Court heard two cases that could endanger the freedom of private religious schools to select the best religion teacher for its students. *Our Lady of Guadalupe School v. Morrissey-Berru* and *St. James School v. Biel* involve fifth-grade religion teachers who sued their private schools, both in the Archdiocese of Los Angeles, for employment discrimination when their contracts weren't renewed. The decision not to renew these teachers is not the question before the court, but something bigger: whether the government is allowed to entangle itself in the sensitive religious decision of who passes on the Faith to the next generation.

These two cases should have been straightforward wins for the schools, because the Supreme Court unanimously addressed this issue in 2012 when the Becket Fund for Religious Liberty won a similar case involving a Lutheran school called *Hosanna Tabor v. EEOC*. At issue in Hosanna Tabor was a church autonomy principle called the "ministerial exception": the idea that the First Amendment protects churches and religious

organizations from government involvement in their internal workings and personnel decisions. The word the courts like to use is “entanglement” and it makes sense; they have no place getting mixed up in the work of religious groups and, more importantly, must avoid the temptation to co-opt religion for government purposes.

In 2012, the court recognized that judges and government officials play a very different role than theologians and ruled that secular courts have no business deciding who should be teaching the Faith or what the content of those teachings should be.

In Our Lady and St. James schools, the Becket Fund simply asked the court to apply this rule held for Lutheran schools to religion teachers at Catholic schools, too. But the 9th Circuit Court of Appeals broke with that precedent and decided that these Catholic school teachers did not fall under the protected group of employees and granted open season on lawsuits on religious schools by former religion teachers. And that brought us back to the Supreme Court.

The arguments from the lawyer for the teachers have an even stingier view of protections for Churches and religious communities than in *Hosanna Tabor*. According to the teachers’ lawyer, a teacher at a religious school who spends all day, every day teaching students to understand, engage with and practice their faith is not covered by the ministerial exception. And that’s because they think that teaching the Faith to the next generation is not a job with “central” religious importance.

As Catholics, and particularly as we celebrate Pope St. John Paul II’s 100th birthday, we can appreciate that these issues don’t only matter to those who believe as we do. *Dignitatis Humanae*, the Second Vatican Council’s Declaration on Religious Freedom, teaches us that all human persons have religious freedom because it is a human right, and this right should be

free from any kind of government intrusion. And so it follows that we must support the religious freedom of those who profess a faith different from our own.

In *Hosanna Tabor*, the court protected the Lutheran school largely because the teacher's ecclesiastical title gave the court little choice but to acknowledge that she was a "minister" of the faith. But many faith traditions, like Catholicism, rely on nonordained laypeople teaching in religious schools to pass the Faith on to their children. Particularly in minority religions, such as Jewish and Muslim communities, teachers with significant religious functions often will not be rabbis and imams, so they don't carry an ordained or "ministerial" title. So the litmus test of "protestant inspired" ministerial titles (this is a phrase used by Justice Samuel Alito last week referencing the history and framework the court uses to understand religion, largely through a protestant Christian lens) is insufficient to protect many faiths, particularly minority religions, from government entanglement.

While the religious pluralism piece of the Vatican II declaration is vital, the more salient point it makes is the one about government power and how it must be limited in order for us to perform the *ad gentes* missionary duty given to us by Jesus Christ; to "have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment and transferal of their own ministers" (*Dignitatis Humanae*, No. 4).

It follows that although these cases are about schools, the broader issue at stake is the self-governance of religious institutions and organizations. The government cannot tell churches how they should resolve a church controversy, and it cannot evaluate their standards of morality. Allowing courts to decide religious questions would open a Pandora's box of lawsuits over internal church affairs, obliterating the

separation of church and state. A decision in these two cases is expected in late June or early July, and although they flew generally under the radar, you can be sure the decision will be one that affects the country at large.

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