

# U.S. Supreme Court Hears Argument on Whether ‘Ministerial Exception’ Covers Lay School Teachers

By Dylan B. Carp, Cecilie E. Read &

May 12, 2020

## Meet the Authors



### Dylan B. Carp

Principal  
(415) 796-5425  
Dylan.Carp@jacksonlewis.com



### Cecilie E. Read

(She/Her)  
KM Attorney  
213-689-0404  
Cecilie.Read@jacksonlewis.com

## Related Services

Employment Litigation

Whether the Establishment and Free Exercise Clauses prevent civil courts from adjudicating employment discrimination claims brought by employees against their religious employer, where the employee carried out important religious functions, is the question presented in two consolidated cases before the U.S. Supreme Court: *Our Lady of Guadalupe School v. Morrissey-Berru*, No. 19-267, and *St. James School v. Biel*, No. 19-348.

(See our article on the Court’s grant of review, [U.S. Supreme Court to Decide Whether ‘Ministerial Exception’ Covers Catholic School Teachers.](#))

In both actions, the district courts granted the schools’ motion to dismiss on the ground the ministerial exception applied to the plaintiffs and therefore, provided immunity to the schools.

The U.S. Court of Appeals for the Ninth Circuit reversed the lower court decisions in both cases, holding the teachers were not covered by the exception, because neither the teachers nor the schools considered them to be ministers, as reflected in their job titles.

In 2012, the Supreme Court decided [Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC](#), 565 U.S. 171, recognizing the ministerial exception, a First Amendment doctrine that bars civil courts from adjudicating employment-related cases brought by “ministerial” employees against their religious employers. The Supreme Court’s decision in *Hosanna-Tabor* was unanimous.

In *Our Lady of Guadalupe* and *St. James School*, separate panels of the Ninth Circuit indicated an employee’s involvement in religious functions alone could never be enough to prove an employee’s ministerial status.

During oral arguments, counsel for the respondent-employees stated that overturning the Ninth Circuit would remove employment law protections from an estimated 300,000 lay teachers of religious schools.

Chief Justice John Roberts started questioning by probing the limits of petitioner-employers’ position, asking whether it is enough that the teacher is required to “personify” church teachings for the ministerial exception to apply. Petitioner’s counsel attempted to avoid the question, but eventually said no, that is not enough.

Justice Ruth Bader Ginsberg’s questions focused on the circumstances surrounding the direction of teacher Kristen Biel. Biel was terminated after disclosing a cancer diagnosis. Ginsberg stated the federal government provides someone with cancer a right to leave under the Family and Medical Leave Act and questioned whether petitioners suggested that religious organizations did not have to comply with that mandate. In another line of questioning to petitioners, Ginsberg stated she did not see how a cancer diagnosis affected a teacher’s ability to perform her duties as a teacher.

Justice Elena Kagan peppered petitioner's counsel with a list of hypothetical employees and whether they would fall under the application of the ministerial exception advocated for by petitioners. When responding to these hypotheticals, petitioner's counsel appeared to embrace the idea that there are "*de minimis*" religious functions that would not qualify a person for the ministerial exception.

Meanwhile, Justice Neil Gorsuch appeared troubled by the prospect that a court would be required to second-guess a religious entity's assertions about the religious importance of a particular function.

Justice Samuel Alito expressed a desire to throw out the whole terminology of minister/ministerial exception as it did not appropriately address titles in non-Christian religions, an issue he raised in his concurrence to the *Hosanna-Tabor* opinion. Similarly, Justice Clarence Thomas asked the employees' attorneys how they address the ministerial exception, which appears to presume some hierarchy in the teaching of the religion to religions that focus on such structures.

Several times turning oral argument, the Justices expressed concern that the various tests offered by both petitioners and respondents may result in government entanglement in religion.

Justice Stephen Breyer asked a simple question, "What should we write to guide the lower courts?" While respondents did not have a similarly simple answer to this, the Court will issue an opinion that eventually will do exactly that.

Jackson Lewis attorneys will continue to monitor this case. If you have questions about the ministerial exemption or similar issues, contact a Jackson Lewis attorney to discuss.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.