

The Ministerial Exception

A CONSTITUTIONAL RIGHT

The government can't tell you what to believe, but can it control *who* tells you what to believe? The courts have confirmed that the First Amendment's Religion Clauses say no. Personnel is policy, and leadership is a religious group's lifeblood. In order to maintain a proper separation of church and state, churches and religious organizations must be free to decide who can lead the faithful and teach the faith.

This constitutional principle, commonly known as the *ministerial exception*, is protected by the First Amendment's promise that the government can neither establish a religion or interfere in the "free exercise thereof." Thus, the First Amendment ensures a church's right to select and control its own religious ministers, including by setting standards of morality, belief, and professionalism, free from government interference.

HISTORY AT THE SUPREME COURT

Courts have repeatedly said that religious organizations have a constitutional right to select leaders and teachers of the faith without government interference—including in a [9-0 ruling](#) at the Supreme Court in a case called [Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC](#). In *Hosanna-Tabor*, the Court upheld the right of a Lutheran school to choose its own religious teachers under the ministerial exception. Writing for the Court, Chief Justice Roberts explained that, "The church must be free to choose those who will guide it on its way." The Wall Street Journal [called](#) the Court's 2012 decision in *Hosanna-Tabor* one of the "most important religious liberty cases in a half century."

Since *Hosanna-Tabor*, multiple courts have upheld religious groups' right to choose their own leaders and teachers, including at a [Jewish day school](#), a [Baptist church](#), and a [Catholic archdiocese](#).

Recently, the Supreme Court re-affirmed *Hosanna-Tabor* in [Our Lady of Guadalupe School v. Morrissey-Berru](#). There, Los Angeles Catholic schools defended themselves against lawsuits brought by teachers who were dismissed for poor performance. The Court [ruled 7-2](#) in favor of the schools, holding that passing the faith on to the next generation is a core mission of religious institutions and, accordingly, that religious institutions must be free to choose who will perform this religious ministry. Government officials are not permitted to control a religious school's decision about who teaches the faith.

CHURCH AUTONOMY

The ministerial exception is one part of the broader constitutional principle, described in *Our Lady* as "church autonomy," that religious groups must be free from government interference when they set their beliefs, establish their practices, and order their own internal affairs. Otherwise, the government would unconstitutionally entangle itself with religion and infringe religious groups' rights to make their internal religious decisions. Church autonomy is fundamental to our country's commitment to religious freedom.



BECKET CASES

The ministerial exception has not only been used to protect synagogues, mosques, churches, and religious schools from government interference in their employment decisions. Becket has also relied on this constitutional principle to help defend the right of religious student groups to ensure their leaders agree with their faith at schools like [Wayne State University](#), [the University of Iowa](#), and [Cal State](#). Additional recent ministerial exception cases in the lower courts include [Demkovich v. St. Andrew the Apostle Parish](#) (where the *en banc* 7th Circuit held that the ministerial exception protected the church's relationship with its church music director), [Starkey v. Roncalli High School](#) (where a district court held that the ministerial exception applied to a guidance counselor at a Catholic high school), and [Belya v. Kapral](#) (where the Russian Orthodox Church is defending its ability to freely determine who is qualified to be a bishop).

COMMON MYTHS

MYTH: *The ministerial exception is just an excuse to discriminate.*

REALITY: The ministerial exception protects the authentic faith of all religious groups. Faith groups must be able to determine their own rules of membership, community standards, and leadership qualifications without governmental interference. What's important here is protecting a healthy separation of church and state: keeping the government out of religious leadership.

MYTH: *Employees at religious schools and organizations have no meaningful employment rights under the ministerial exception.*

REALITY: That's not true. Most employees for religious groups aren't ministers and those that are ministers still have many important rights. But ministers can't make a federal case out of who should be a minister of the church, or how they should engage in ministry. From our nation's founding, the government has recognized that the relationship between religious groups and their ministers is a special one that the government cannot interfere with.

MYTH: *The ministerial exception is just a loophole for religious institutions to get away with firing people without just cause.*

REALITY: Religious leaders and teachers are the lifeblood of their religious communities. Ministerial decisions always have important religious implications for those communities, which is why courts have recognized that the government cannot second-guess those decisions.

MYTH: *The ministerial exception is the only law that protects the freedom of religious groups to hire consistently with the tenets of their faith.*

REALITY: The ministerial exception is one of several defenses that protect against Church-State entanglement. There are also other important protections available to religious employers that apply to employees beyond ministers, such as the broader church autonomy doctrine and state and federal statutory protections, such as the religious exemptions in federal employment law (Title VII) and federal education law (Title IX).

For more information, please see:

- [Ministerial exception video](#)
- [Case page for Hosanna-Tabor v. EEOC](#)
- [Case page for Our Lady of Guadalupe School v. Morrissey-Berru](#)
- [Case page for St. James Catholic School v. Biel](#)