

Nos. 19-267, 19-348

In the Supreme Court of the United States

OUR LADY OF GUADALUPE SCHOOL, PETITIONER,

v.

AGNES MORRISSEY-BERRU

ST. JAMES SCHOOL, PETITIONER,

v.

DARRYL BIEL, AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF KRISTEN BIEL

*ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF OF PARTNERSHIP SCHOOLS AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Partnership Schools is an independent, non-profit private-school management organization that operates seven Catholic schools in Harlem and the South Bronx.² These schools have been active in their communities for generations: the youngest, Mt. Carmel-Holy Rosary School in East Harlem, recently turned 70, and the oldest, Immaculate Conception, has been serving students and families in the South Bronx for over 160 years.

Formed in 2010 through the merger of two New York educational organizations, Partnership Schools has more than 20 years of combined experience supporting Catholic education in the Archdiocese of New York. Today, Partnership Schools serves more than 2,000 students from two of the poorest congressional districts in the nation.³ The organization seeks to develop outstanding Catholic elementary schools that provide low-income students with the academic preparation, values, and skills they need to break the cycle of poverty and lead fulfilling, productive lives.

¹ No counsel for a party wrote this brief in whole or in part, and no one other than *amicus curiae* or its counsel contributed money to fund the preparation or submission of this brief. The parties have consented to this filing.

² The seven Partnership schools are Immaculate Conception School (the Bronx), Our Lady Queen of Angels School (East Harlem), St. Mark the Evangelist School (Central Harlem), St. Athanasius School (Hunts Point), Sacred Heart School (Highbridge), Mt. Carmel-Holy Rosary School (East Harlem), and St. Charles Borromeo School (Harlem).

³ In 2018, New York's 13th District (Harlem) was ranked 420th nationally in median income; the 15th District (South Bronx) was ranked last. See *U.S. Congressional Districts by their Median Income*, GOBankingRates, tabsoft.co/20308P6 (last visited Feb. 4, 2020).

Partnership Schools aims to create good citizens and good people—“Saints and Scholars,” in the words of the banners outside of St. Charles Borromeo School in Harlem. The seven Partnership schools are communities of faith, where individuals work together for the betterment of all. The schools teach Catholic beliefs, provide opportunities for spiritual growth through prayer and liturgy, and establish a comprehensive, virtue-focused school culture—enabling students to grow in their ability to live out Catholic teaching.

Partnership Schools is submitting its first-ever *amicus* brief because it has a critical interest in these cases. Whether the ministerial exception protects Partnership Schools’ ability to make employment decisions regarding teachers who are charged with conveying the Church’s message to the next generation is a question of pressing importance. The primary responsibility of the Catholic school teacher is to be a living example of the school’s core beliefs. The seven Partnership schools cannot carry out their mission of inspiring students to embrace Catholicism unless they possess the freedom to assemble a faculty of educators who embody the Church’s religious tenets. Because the decisions below threaten to inhibit that freedom, Partnership Schools respectfully urges this Court to reverse.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Catholic Church has long recognized the importance of Catholic education for improving the spiritual health of society, as well as the necessity of making such education accessible and affordable to all. Archbishop “Dagger John” Hughes, who founded New York’s system of Catholic schools in the nineteenth century, shared the Church’s belief that Catholic schools possess transformative power for historically underserved communities. Today, thousands of Catholic schools across the country—

including the seven that Partnership Schools manages—are carrying on Archbishop Hughes’ legacy.

Sociologists have long documented a beneficial “Catholic School Effect” of favorable outcomes for students of Catholic schools as compared to those from public schools. This effect is even more dramatic for disadvantaged minority students. Catholic schools, through rigorous academic training as well as a strong moral orientation, provide these students with a path to success and opportunity.

Over the last century, the landscape of Catholic schooling in the United States has changed dramatically. Before 1950, 90% of all Catholic school teachers were members of religious communities or clergy; today, the number has dwindled to just 2.8%. Catholic schools have thus increasingly relied on lay educators to convey Catholic teachings and model good behavior, and the Church itself has highlighted the critical role that lay teachers play in carrying out its educational mission.

The ministerial exception “protects a religious group’s right to shape its own faith and mission through its appointments.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). Until the decisions below, the courts of appeals and the state supreme courts had applied a functional approach to the ministerial exception. Under that approach, ordination status or formal title are not determinative; rather, the question is whether the individual “play[s] a substantial role in conveying the Church’s message and carrying out its mission.” *Id.* at 204 (Alito, J., concurring) (internal quotation marks omitted). But the Ninth Circuit has now discarded this long-held consensus. In its place, the court of appeals embraced a formalistic reading of the ministerial exception, holding that teachers who undisputedly had “significant religious responsibilities” at Catholic schools did not qualify as “ministers” under the exception

because they lacked formal religious training or credentials. *Our Lady*, Pet. App. 3a; *St. James*, Pet. App. 11a.

The Ninth Circuit’s rigid understanding of the ministerial exception ignores the reality of modern Catholic education. Lay teachers, who instruct and mentor students day in and day out, and who model in their everyday behavior the teachings of the Catholic Church, are the primary drivers of religious education in Catholic schools today. In the eyes of the Catholic Church, *every* religious teacher is a “minister,” as it is the core job of these teachers to impart the faith to their students. As a result, all Catholic school teachers—regardless of title or formal training—fall squarely within the scope of the ministerial exception, whatever the outer limits of the exception might be. Catholic schools cannot succeed unless they can select and manage, free of government interference, those who will perform the central task of imparting religious and moral values.

ARGUMENT

I. Lay Teachers In Catholic Schools Play A Critical Role In Transmitting The Catholic Faith To The Next Generation

Education is “integral to the mission” of the Catholic Church: “[E]very Catholic educational institution is a place to encounter the living God who in Jesus Christ reveals his transforming love and truth.” His Holiness Benedict XVI, Address at a Meeting with Catholic Educators (Apr. 17, 2008), <http://bit.ly/2S2DrNx>. As the Second Vatican Council noted decades ago, a Catholic school helps “fulfill[] * * * the mission of the People of God” and “foster[s] * * * dialogue between the Church and mankind,” and the Church “depends * * * *almost entirely*” upon teachers for the realization of this goal. Second Vatican Council, Declaration on Christian Education *Gravissimum Educationis*, #8 (Oct. 28, 1965),

<http://bit.ly/39cc0q2> (emphasis added). Catholic school teachers play an integral role in “announcing the way of salvation to all men,” “communicating the life of Christ to those who believe,” and “assisting men to be able to come to the fullness of this life.” *Id.* #3.

Under Canon law, “[t]he instruction and education in a Catholic school must be grounded in the principles of Catholic doctrine,” and, accordingly, Catholic school teachers “are to be outstanding in correct doctrine and integrity of life.” 1983 Code c.803, § 2. In the early twentieth century, the teaching staff of Catholic schools consisted overwhelmingly of members of religious orders. Charles J. Russo et al., *Private Religious Schools*, in *The Oxford Handbook of Religion and American Education* 169, 175 (Michael D. Waggoner & Nathan C. Walker eds., 2018). But in recent decades, with a “notable decrease in the number of” members of religious orders “dedicated to teaching,” Catholic schools have increasingly relied on laity to serve as educators. Sacred Congregation for Catholic Education, *Lay Catholics in Schools: Witnesses to Faith*, #13 (Oct. 15, 1982), <http://bit.ly/3bgR9UA>. In 1950, 90% of all Catholic school teachers were members of religious communities or clergy. Russo et al., *supra*. By 1970, Catholic schools had largely equal numbers of lay and religious staff. *Id.* Today, sisters, brothers, and clergy comprise only 2.8% of professional staff in Catholic schools across the country. *Catholic School Data*, National Catholic Educational Association (2019), <http://bit.ly/38C6Wv0>.

Recognizing the growing trend of laity serving as Catholic school teachers, the Sacred Congregation for Catholic Education—the department of the Roman Curia responsible for schools and educational institutions—has made clear that all Catholic educators, both lay and religious, engage in “the communication of truth.” *Lay Catholics in Schools*, *supra*, at #16. A Catholic educator’s

“professional activity,” the Congregation explained, is the “unique participation in the prophetic mission of Christ, carried on through one’s teaching.” *Id.* The Congregation concluded:

Lay Catholic educators in schools * * * must never have any doubts about the fact that *they constitute an element of great hope for the Church.* * * * [The Church] has entrusted them with the integral human formation and the faith education of young people. These young people are the ones who will determine whether the world of tomorrow is more closely or more loosely bound to Christ.

Id. #81 (emphasis added).

The Sacred Congregation has since reiterated on numerous occasions that teachers—both lay and religious—play a vital role in ensuring the success of the church’s mission. See, *e.g.*, Sacred Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium*, #19 (Dec. 28, 1997), <http://bit.ly/2S2Gq8L> (“[T]eachers and educators fulfill a specific Christian vocation and share an equally specific participation in the mission of the Church, to the extent that it depends chiefly on them whether the Catholic school achieves its purpose.” (internal quotation marks omitted)); Sacred Congregation for Catholic Education, *The Religious Dimension of Education in a Catholic School* #96 (Apr. 7, 1988), <http://bit.ly/3bdnxY4> (“A [Catholic school] teacher who has a clear vision of the Christian milieu and lives in accord with it will be able to help young people develop a similar vision, and will give them the inspiration they need to put it into practice.”).

Simply put, Catholic schools across the country rely on lay teachers to “foster the academic, religious, and moral development of their students.” Nina Shokraii, *Why Catholic Schools Spell Success for America’s Inner-City Children*, Heritage Found. (June 30, 1997),

<https://herit.ag/2GsRu8j>. The seven Partnership schools are no exception. The Partnership Schools’ staff handbook expressly states that *all* Catholic school teachers—both lay and clergy—are “ministers of the Catholic faith.” Partnership Schools, *Faculty and Staff Handbook* 36 (June 2019). “By choosing to teach in a Catholic School,” the handbook makes clear, “each teacher assumes the responsibility to teach as Jesus did. The teacher models himself/herself after Christ the Teacher and daily imitates His words and actions in our school community.” *Id.* And “[a]s one who models the actions of Christ the Teacher, the teacher must * * * carry out all responsibilities and conduct oneself in a manner consistent with the religious, moral, and ethical principles of the Catholic Church both on and off school premises.” *Id.* at 4.

Lay teachers in Partnership schools are tasked with imbuing the entire school day with Catholic values. These teachers are assessed on whether they have sufficiently made Catholic values “evident in the classroom,” and whether they have provided “[m]odeling and guidance to support spiritual development and Catholic formation.” *Id.* at 54. In modern-day Catholic schools, it is largely lay teachers—rather than priests and nuns—who are “privileged witness[es] of Christ’s love for his children, seeking to hand on the content and practices of the Catholic faith while fulfilling [their] Christian vocation.” *Id.* at 5.

II. Catholic Schools—Staffed Primarily By Lay Teachers—Have A Transformative Impact On Inner-City Communities

If education is integral to the mission of the Catholic Church, it assumes even greater significance for underserved communities. As Pope Benedict XVI put it, “[s]et against personal struggles, moral confusion and fragmentation of knowledge, the noble goals of scholarship and education, founded on the unity of truth and in service of the person and the community, become an especially powerful

instrument of hope.” His Holiness Benedict XVI, Address at a Meeting with Catholic Educators, *supra*. For this reason, “everything possible must be done, in cooperation with the wider community, to ensure that [Catholic educational institutions] are accessible to people of all social and economic strata. No child should be denied his or her right to an education in faith.” *Id.* Throughout history, “[c]ountless dedicated Religious Sisters, Brothers, and Priests together with selfless parents have, through Catholic schools, helped generations of immigrants to rise from poverty and take their place in mainstream society.” *Id.*

In keeping with the Catholic Church’s commitment to education, Archbishop John Hughes, who founded New York’s Catholic school system 150 years ago, believed that Catholic education would help “bring about an inner, moral transformation” in New York’s burgeoning immigrant population. William J. Stern, *How Dagger John Saved New York’s Irish*, City Journal (Spring 1997), <http://bit.ly/2O4uZLo>. Archbishop Hughes saw Catholic education as the means to instill “a religion of personal responsibility” and “a revolution in values,” and “a moral transformation” for these underprivileged youth. *Id.* Archbishop Hughes’ contributions were but one example of the Catholic Church’s commitment to education.

Urban Catholic schools in New York and across the country continue in this long tradition of supporting education and spiritual growth. Catholic schools have “an unwavering commitment to an academic program for all students, regardless of background or life expectations, and an academic organization designed to promote this aim.” Anthony S. Bryk et al., *Catholic Schools and the Common Good* 10 (1993). Partnership Schools is no exception; its schools serve over 2,000 students living in some of New York’s most underprivileged neighborhoods. Partnership Schools, *2018-2019 Year-End Report* 4 (2019). 67% of those students are Hispanic and 31% are African-

American. *Id.* Nearly one out of ten of those students are English-language learners, 85% receive need-based scholarships, and 70% qualify for free or reduced-price lunch. *Id.* Despite their hardships, Partnership Schools' students consistently outperform New York State and City averages on New York State tests in language arts and math. *Id.* at 5. In fact, last year, 74% of Partnership Schools' graduating eighth graders went on to attend some of New York City's top high schools. *Id.* at 6.

Through the dedication and guidance of the teachers they employ, Catholic schools provide low-income students with an academic preparation and moral education that enables them to escape the cycle of poverty. The alumni of such Catholic schools today include professionals, politicians, diplomats, federal judges, and even Justices of this Court. See Corey Mitchell, *The Supreme Court Justices Are All Ivy Law Grads, But What About High School?*, Educ. Week (July 12, 2018), <http://bit.ly/2t5dWRU>.

Justice Thomas has said that, together with his grandparents, the nuns at St. Benedict's in Savannah, Georgia, where he attended elementary school, changed his life. In his words,

Sometimes their strict rules chafed, but they also gave me a feeling of security, and above all they opened doors of opportunity leading to a path that took me far from the cramped world into which I had been born. * * * To stay there would have doomed me to a dismal life of ignorance, perhaps even of crime—a life lost before it started.

Clarence Thomas, *My Grandfather's Son* 27 (2007).

Likewise, reflecting on her education at the Blessed Sacrament School in the Bronx, Justice Sotomayor recalled,

You know how important those eight years were? It’s symbolic of what it means for all our families, like my mother, who were dirt-poor. She watched what happened to my cousins in public school and worried if we went there, we might not get out. So she scrimped and saved. It was a road of opportunity for kids with no other alternative.

David Gonzalez, *For Sotomayor, Bronx School’s Closing Prompts Heartache — and Memories*, N.Y. Times (Jan. 25, 2013), <https://nyti.ms/30ZCAzM>. Most of all, Justice Sotomayor said that her time at Blessed Sacrament “taught [her] how to be a good person.” *Id.* “In the kind of world we lived in, with the drug addiction and crime and sadness that permeates the community,” Justice Sotomayor recounted, “you needed a model of someone teaching you that being a good human being has value.” *Id.*

Indeed, the “Catholic School Effect”—also known as a “Catholic School Advantage”—is well-documented. See generally James R. Valadez, *Remembrance of a Christian Brothers’ Education*, 22 *J. Catholic Ed.* 73, 78-80 (2019).⁴ For example:

- 99% of Catholic high school students graduate on time, and 85% attend college.⁵

⁴ A similar “effect” has been documented for other religious private schools. See, e.g., Elissa Kido, *For Real Education Reform, Take a Cue From the Adventists*, *Christian Science Monitor* (Nov. 15, 2010), <http://bit.ly/2RTRW6i> (Seventh-Day Adventist); Jeff Besen, *Acing the Regents Exams*, *LI Herald* (Dec. 20, 2018), <http://bit.ly/2On2DMf> (Jewish); Will Flanders, *Apples to Apples: The Definitive Look at School Test Scores in Milwaukee and Wisconsin for 2019*, *Wisconsin Inst. for Law & Liberty* 20 (2019), <http://bit.ly/2UIP5o6> (Lutheran).

⁵ United States Conference of Catholic Bishops, *Catholic School Research and Studies* (Jan. 2018), available at <http://bit.ly/2Uvq5en> (“USCCB Fact Sheet”)

- Catholic school graduates have higher earning potentials than public school graduates.⁶
- Catholic school graduates are more likely to vote.⁷
- Girls who attend Catholic schools are more likely to avoid early pregnancy and boys are less likely to face incarceration.⁸
- “Catholic school graduates are more civically engaged, more tolerant of diverse views, and more committed to service as adults * * * than their public school peers.”⁹
- Catholic school students “are less likely to act out or be disruptive than those in other private or public schools,” “exhibit more self-control than those in other private schools or public schools,” and “exhibit more self-discipline than students in other private schools.”¹⁰

This “Catholic School Effect” is especially evident for low-income inner-city minority students. Specifically:

- 98% of low-income, minority students who attend Catholic schools graduate from high school in four years, compared to 66% in public schools.¹¹ For an inner-city child, the positive effect of Catholic school attendance on graduation rate “is twice as

⁶ *Id.*

⁷ *Id.*

⁸ Kathleen Porter-Magee, *Catholic on the Inside: Putting Values Back at the Center of Education Reform* 8, Manhattan Inst. (2019), <http://bit.ly/2t8uZTi>.

⁹ USCCB Fact Sheet, *supra*.

¹⁰ Michael Gottfried & Jacob Kirksey, *Self-Discipline and Catholic Education: Evidence from Two National Cohorts* 6, Fordham Inst. (2018), <http://bit.ly/2RTgAmd>.

¹¹ University of Notre Dame, *The Catholic School Advantage Access and Enrollment Management* 2, <http://bit.ly/2RTIY8W>.

large as the effect of moving from a one- to a two-parent family and two and one-half times as large as the effect of raising parents' education from a high school dropout to a college graduate."¹²

- Catholic school students demonstrate higher academic achievement than their public school peers from similar socioeconomic backgrounds.¹³
- The student achievement gap between students of different racial and/or socioeconomic backgrounds is significantly smaller in Catholic schools than in public schools.¹⁴
- Catholic schools are “more effective for the education of African American students” than public schools, with one researcher concluding that the “effects of race, gender, and social class seem to be ameliorated, if not eradicated, in Catholic schools.”¹⁵
- “Inner-city Catholic school parents report taking an active role in their children’s education, and they believe that participating in the Catholic school community represents an opportunity to break the cycle of poverty.”¹⁶

Even beyond the immediate, direct effects on their students’ lives through education, Catholic schools also improve the social capital of the communities in which they are situated. See generally Robert D. Putnam,

¹² Shokraii, *supra*.

¹³ USCCB Fact Sheet, *supra*.

¹⁴ *Id.*

¹⁵ Darlene Eleanor York, *The Academic Achievement of African Americans in Catholic Schools: A Review of the Literature*, in *Growing Up African American in Catholic Schools* 11, 21, 39 (J.J. Irvine & M. Foster eds., 1996).

¹⁶ USCCB Fact Sheet, *supra*.

Bowling Alone 19 (2000) (defining “social capital” as “connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them”). The mere *presence* of a Catholic school in a poor urban community tends to “suppress social disorder, increase social cohesion, and bolster collective efficacy.” Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 *Notre Dame L. Rev.* 887, 953 (2010). One 2012 study found that “police beats with open Catholic schools have lower rates of serious crime than those without them,” while open charter schools by contrast had “no statistically significant effect on crime.” Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Charter Schools, and Urban Neighborhoods*, 79 *U. Chi. L. Rev.* 31, 33 (2012). Catholic schools, simply put, “build[] strong neighborhood networks”—even for families that do not enroll their children in these schools. Ann Marie Ryan, *Lost Classroom, Lost Community: Catholic Schools’ Importance in Urban America*, 125 *Am. J. Ed.* 141, 142 (2018) (book review).

Teachers play an indispensable role in fostering the “Catholic School Effect” in disadvantaged communities. “[N]o Catholic school can be effective without dedicated Catholic teachers, convinced of the great ideal of Catholic education.” His Holiness John Paul II, Message to the National Catholic Educational Association of the United States (Apr. 16, 1979), <http://bit.ly/372o5wO>. Catholic school teachers “are called to lead the young to Christ, to inspire them to follow him, to show them his boundless love and concern for them.” His Holiness John Paul II, Address to Catholic Educators (Sept. 12, 1984), <http://bit.ly/2S2Yqj5>. Through Catholic school teachers, “as through a clear window on a sunny day, students must come to see and know the richness and the joy of a life lived in accordance with [Christ’s] teaching, in response

to his challenging demands.” *Ibid.* In other words, while certainly “striving for excellence in the areas of professional and technical training, Catholic schools must never forget that their ultimate purpose is to prepare young people to take up, in Christian freedom, their personal and social responsibility for the pilgrimage of all humanity to eternal life.” *Ibid.*

Thus, Catholic educators are tasked with emphasizing “moral choices and character values” just as much as educational performance. Philip V. Robey, *Catholic Schools and Educating the Whole Child*, Educ. Week (Oct. 4, 2011), <http://bit.ly/38KQoRv>. They are trained to teach the *whole* child—fostering upstanding behavior both inside and outside the classroom and “treat[ing] every student as having equal worth before God.” Porter-Magee, *supra*, at 6.

Studies have long documented the benefits of “the close-knit community in Catholic schools facilitated by smaller class sizes, an ethos of caring, and teachers who assumed multiple roles, of which the transmitter of knowledge [is] only one.” Vivian Louie & Jennifer Holdaway, *Catholic Schools and Immigrant Students: A New Generation*, 111 Teachers Coll. Record 783, 803 (2009). It is Catholic educators who “guide[] low-income minority students to increase their capacity for positive social interactions and resilient attitudes, despite ongoing life challenges.” Valadez, *supra*, at 79. By focusing on the needs of the whole child, these teachers instill religion and “a revolution in values” in thousands of underprivileged students every single day, with extraordinary results. Stern, *supra*; see pp. 11-12, *supra*. All Catholic educators thus further “[t]he Church’s primary mission of evangelization, [which] is consonant with a nation’s fundamental aspiration to develop a society truly worthy of the human person’s dignity.” His Holiness Benedict XVI, Address at a Meeting with Catholic Educators, *supra*.

III. A Functional Approach To The Ministerial Exception Protects Catholic Schools' Ability To Further The Church's Educational Mission

The ministerial exception safeguards the freedom of religious institutions—like the seven Partnership schools—to “select[] * * * those who will personify [their] beliefs.” *Hosanna-Tabor*, 565 U.S. at 188. The ministerial exception, this Court emphasized in *Hosanna-Tabor*, “ensures that the authority to select and control who will minister to the faithful * * * is the church’s alone.” *Id.* at 194-195. Although the Court was “reluctant * * * to adopt a rigid formula for deciding when an employee qualifies as a minister,” the Court concluded that the individual in that case was a minister given her formal title, as well as the fact that she “performed an important role in transmitting [her church’s] faith to the next generation.” *Id.* at 192.

While joining the Court’s unanimous opinion, Justice Alito (along with Justice Kagan) wrote separately to emphasize that, in applying the ministerial exception, “courts should focus on the function performed by persons who work for religious bodies.” *Id.* at 198 (Alito, J., concurring). “What matter[ed]” in *Hosanna-Tabor* was not the respondent’s status or formal title as an ordained minister, but rather that the respondent there “played an important role as an instrument of her church’s religious message and as a leader of its worship activities.” *Ibid.* And as Justice Alito noted, the ministerial exception “leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a teacher or messenger of its faith.” *Id.* at 202 (Alito, J., concurring). He explained:

When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters. Religious teachings cover the gamut from moral conduct to metaphysical truth, and both

the content and credibility of a religion’s message depend vitally on the character and conduct of its teachers. *A religion cannot depend on someone to be an effective advocate for its religious vision if that person’s conduct fails to live up to the religious precepts that he or she espouses.*

Id. at 201 (emphasis added). Accordingly, the exception “should apply to 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. The question is simply whether the individual has been “entrusted with teaching and conveying the tenets of the faith to the next generation”—a function that is “essential to the independence of practically all religious groups.” *Id.* at 200.

These cases demonstrate the wisdom of the functional approach to the ministerial exception. As explained above, Catholic schools in the United States rely *overwhelmingly* on lay teachers to serve as purveyors of the faith, see p. 5, *supra*. It is non-clergy members, in other words, with whom the Church has “entrusted * * * the integral human formation and the faith education of young people.” *Lay Catholics in Schools* #16. Lay educators “perform[] the important role of transmitting” the Catholic “faith to the next generation”—by, among other things, modelling good behavior, teaching Catholic doctrine and practice, and exhibiting “faith in action,” Porter-Magee, *supra*, at 10. See generally *Hosanna-Tabor*, 565 U.S. at 192.

If the First Amendment is to give Catholic schools the “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine,” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952), it must allow them the freedom to make employment decisions regarding those they have entrusted to

pass on the faith to the next generation, irrespective of formal job title or religious training.

CONCLUSION

For the foregoing reasons, the Court should reverse the decisions below.

Respectfully submitted.

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