
REFLECTION ON *OUR LADY OF GUADALUPE SCHOOL V. MORRISSEY-BERRU* AND THE PLACE OF RELIGIOUS EDUCATION IN AMERICAN SOCIETY

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Religious education, formal and informal, is core to almost every faith, but in the United States, Catholic schools have had a particularly prominent role. Today, laypersons serve a crucial role in passing faith to the next generation and are the primary teachers of Catholic theology and doctrine for elementary school-age children.

Grounded in the centuries-old tradition of the Catholic Church as one of the primary transmitters and repositories of knowledge in Western civilization, Catholic schools came to the United States along with Catholic immigrants from Europe and Latin America. Those migrants frequently arrived unable to speak English and with little formal education. They looked to the Church for education, often unavailable to them elsewhere. Indeed, parishes sometimes built schools out of necessity when immigrant families were not welcomed in public schools. In their parish and its school, families found an integrated cultural, religious, and linguistic home, together with an education that prepared their children to succeed in American society.

California followed this trend. Although the Catholic presence in Southern California long predates the United States itself, the Archdiocese of Los Angeles saw its Catholic population swell after World War II, and new parishes typically started a Catholic school.

Today, in the Archdiocese of Los Angeles, there are over 70,000 students enrolled in 262 Catholic schools serving both long-established and newly arriving people groups and spanning all economic strata. The schools include financial support for low-income families to obtain a rigorous faith-based education, often in communities where public education falters. Religious orders continue to serve these schools, but today over ninety-five percent of the educators are laypersons. Schools serve their communities as well. In the current COVID-19 pandemic, sixty Archdiocesan schools in low-income areas have distributed nearly two million meals to families and communities of all faiths.

If the Catholic school is a sanctuary of faith, then Catholic school-teachers occupy a unique place as custodians of faith formation. From their first day as faculty members, their daily lessons and tasks are

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interwoven with teaching Catholic doctrine, preparing students for liturgies and sacraments, and integrating the faith into all subjects. Teachers, school leadership, families, and clergy share the mission to enrich the mind, body, and spirit of students with spiritual formation and academic tools for life. Families entrust the Catholic schools with this special role, and there is an abiding expectation and reliance on schools to hire women and men who will teach authentically and effectively.

For generations, individuals — especially first-generation immigrants — practicing Catholics and not, have cited their Catholic education as critical to their values, their academic and personal successes, and their perspectives on faith and religion. Those values are conveyed by the teachers. The Archdiocese specifically tasks its teachers with modeling a sense of Jesus as “teacher” and “Rabbi” and helping students to ask “why,” not just “what,” as they learn.

Other faiths do the same. Given that framework, common sense dictates that Catholic schools — not government officials — should be the ones to decide who can and should teach the faith. Indeed, that commitment, not any disregard for individuals or government itself, was the abiding focus of this litigation, which began as two employment disputes.

In the Archdiocese, teachers sign one-year contracts and are evaluated annually in the contract renewal process. For transparency, the Archdiocese’s Administrative Handbook, available online since 2009,¹ includes forms of teacher contracts. The form contract outlines the Church’s dual expectations of teachers as ministers and educators.

The Archdiocese provides administrative support and oversight, but employment decisions are made at the local parish level in accord with Church law. Schools are committed to the continued professional growth of every teacher, but each year contracts for certain teachers are not renewed because they are not effectively carrying out the dual ministry of academic teaching and faith formation.

Two teachers at Our Lady of Guadalupe School and St. James School who did not have their contracts renewed sued and claimed discrimination. These cases were challenges for both the teachers who were not rehired and the staff who felt the burden of the decision, but the cases themselves proceeded in an unremarkable fashion. Discovery was streamlined to limit costs, and the cases were litigated in anticipation of early resolution. In fact, both cases were initially dismissed on summary judgment at the trial courts in reliance on the 2012 Supreme Court case *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*.²

¹ See *Administrative Handbook*, ARCHDIOCESE OF L.A., <http://handbook.la-archdiocese.org> [<https://perma.cc/FA48-8HH7>].

² 565 U.S. 171 (2012).

When the teachers appealed to the Ninth Circuit, a team of lawyers was formed, including attorneys from a variety of religious traditions — Protestant, Catholic, and Jewish — and trial court litigators, appellate colleagues, Archdiocesan in-house counsel, and special appellate counsel. Importantly, that team remained together throughout the unanticipated Supreme Court phase, drawing intentionally on the full complement of personal, religious, and legal perspectives and over thirty amici curiae.

Like other cases before the Supreme Court, the process could be described as stuffing an elephant into a mousehole. Extensive information must be married to complex legal arguments and then distilled into just a few briefs and a few minutes of oral argument to mold a case that the Supreme Court can properly consider. No distillation can ever do complete justice to the full complexities of the facts or the law. Inevitably, much of the elephant can't quite fit into the mousehole.

That familiar pattern was pronounced in *Our Lady of Guadalupe School v. Morrissey-Berru*³ and *St. James School v. Biel*,⁴ two cases that put before the Supreme Court not just an employment dispute between discrete parties, or even the interpretation of a particular federal statute, but how part of the Bill of Rights intersects with an entire way of life. The cases ultimately concerned the role of Catholic education, and religious education more generally, within American society. Thus, although the question presented was whether the First Amendment's ministerial exception protection applied to two Catholic schoolteachers, the question behind the question presented was: Can religious schools in the United States truly lead an independent existence as learning communities?

Despite the challenge of weighing such enormous stakes, and the unexpected intrusion of the COVID-19 pandemic, the Court reached a broad-based 7–2 decision that will protect the independence of religious schools for generations. Indeed, while the dissent disagreed about how the facts should be applied in the cases, all nine Justices recognized the crucial role that religious schools play in American life. Given that broad agreement, the social impact of *Our Lady of Guadalupe* is evident.

The Court noted that “[r]eligious education is vital to many faiths practiced in the United States.”⁵ It then reviewed the importance of religious education within the Catholic, Protestant, Jewish, Muslim, Mormon, and Seventh-day Adventist traditions, concluding that “[t]his brief survey does not do justice to the rich diversity of religious education in this country, but it shows the close connection that religious

³ 140 S. Ct. 2049 (2020).

⁴ 140 S. Ct. 2049.

⁵ *Id.* at 2064.

institutions draw between their central purpose and educating the young in the faith.”⁶ For the Court, that was sufficient, stating: “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.”⁷

Our Lady of Guadalupe thus embodies a fundamental national commitment, through the First Amendment, to the protection and nurturing of learning communities rooted in particular faith traditions. While the case itself arose in the context of a Catholic school and the Catholic faith tradition, it is about all faiths. Indeed, the value of these schools to society as religious schools led directly to the Court’s conclusion that these institutions must remain free from government control and thus are broadly covered by the ministerial exception. Keeping church and state separate helps both.

While the decision will be noted as having been delivered during the COVID-19 pandemic, the pandemic itself has affirmed the place of religious schools in society and the gap when they are absent.

Indeed, religious schools — not least Catholic schools — are a key vehicle for religious communities to nurture and form their children into adults who lead fruitful, faithful lives. Government may and ought to protect these schools from external interference, but it cannot itself interfere with how particular religious communities choose those who teach their children. Put another way, true pluralism requires true independence for faith communities — all faith communities — and thus independence for their schools as well.

Our Lady of Guadalupe will thus have a significant and lasting social impact because it protects and promotes the true pluralism the First Amendment is designed to foster, not just for Catholics, but for all faiths. As the Supreme Court concluded last year: “The Religion Clauses of the Constitution aim to foster a society in which people of all beliefs can live together harmoniously.”⁸ That is a goal every American can embrace.

⁶ *Id.* at 2066.

⁷ *Id.* at 2069.

⁸ *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2074 (2019).