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# San Francisco's 'teachers as ministers' debate continues, this time in judiciary hearing

by [Mandy Erickson](#) | *Jul. 24, 2015*

San Francisco faculty handbooks

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**SAN FRANCISCO --** A Catholic school that recruits non-Catholic students, promises not to proselytize, and follows a curriculum approved by the state may not be able to hide behind religious freedom rights, a lawyer said at a state assembly hearing.

"These Catholic schools have entered the public square," Kathleen Purcell said about the four Bay Area high schools whose teachers are in an employment dispute with San Francisco Archbishop Salvatore Cordileone.

Purcell, a former teacher at Bishop O'Dowd High School in Oakland, Calif., and a constitutional lawyer, said the schools "have to decide who they are." Are they religious institutions that cater to students of a particular faith and teach according to that faith, or are they private schools that adhere to state standards and welcome students of all religions?

"They want it all," Purcell said of the archdiocese.

Purcell and three other lawyers spoke at a California State Assembly judiciary hearing Thursday in San Francisco. Assemblymember Phil Ting (D-San Francisco) requested the hearing.

Calling the four high schools -- Archbishop Riordan High School and Sacred Heart Cathedral

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Preparatory in San Francisco, Marin Catholic High School in Kentfield and Junipero Serra High School in San Mateo -- "extremely prestigious," Ting said the schools "have a history of graduating many leaders in the Bay Area and California."

Ting said he called the hearing -- the purpose of which was to gather information about the controversy -- because he was worried about the impact of the archbishop's proposed changes on the schools.

Earlier this year, Cordileone [inserted a morality clause](#) into the teacher handbook that described homosexuality, reproductive technology, masturbation and other behavior as "gravely evil" and added that teachers are expected to follow the Catholic church's teaching in their private as well as professional lives. The archdiocese later [rewrote the clause](#) to tone down the language, but maintained that teachers would be reclassified as ministers.

The lawyers debated the significance of the ministerial classification on employment protection as well as its importance for religious freedom. Leslie Griffin, a law professor at the University of Nevada, Las Vegas, said the ministerial classification is a "silver bullet" for employers.

"It's a big exception," she said: Discrimination laws apply "unless an employee is a minister."

Jeffrey Berman, an attorney with Seyfarth Shaw in Los Angeles, agreed that being classified as a minister is an exception to laws barring discrimination but said, "It's just another exemption."

The minister classification has applied to administrators, kosher cooks and choir directors, said Berman, who represents religious organizations. "Teachers qualify because they are role models in fulfilling the religious mission of the school."

Michael Blacher, whose firm, Liebert Cassidy Whitmore, represents private schools in California, added that the purpose of many of his religious school clients, whether Christian, Islamic or Jewish, is to promote the faith. The schools hire teachers who can carry out that task, he said.

But Purcell noted that many Catholic schools, including the four archdiocesan schools, make a point of reassuring non-Catholic parents that they do not pressure students to convert. In addition, a large portion of the student body is non-Catholic, and the schools actively recruit students who are not Catholic.

Purcell added that the archdiocesan schools are accredited by the University of California, which requires that religion classes, for example, teach objectively about religion and that science classes teach evolution. Some Catholic schools in the state are not accredited by the university.

Mark Stone (D-Monterey Bay), chairman of the judiciary committee, asked the lawyers: If a school adheres to state accreditation standards but requires teachers to follow Catholic values in their private lives, "aren't these morality clauses being arbitrarily enforced?"

Berman responded that some of the institutions his firm represents have made decisions to forgo government funds, for example, in order to remain true to their faith. "My clients anguish over these decisions."

As Stone and Ting noted in their opening remarks, the legal questions regarding the archbishop's actions boil down to religious freedoms versus labor rights. Agreeing that those rights were clashing in the archbishop's proposals, the lawyers provided arguments for both sides. Blacher said from the schools his firm represents, "one refrain I keep hearing is how fortunate they are to live in a country that protects their religious freedoms."

Yet Griffin warned that religious freedom is not absolute. Noting that children are protected from sex abuse by religious leaders, she asked, Shouldn't employees receive protections?

"Contracts that ask people to give up their constitutional rights are problematic," she said.

After the discussion by the lawyers and the lawmakers, two dozen people from the audience of 100 or so condemned the archbishop's moves to change the teacher contract. Teachers, students, parents and community members said they were worried about the morality clause's effect on students who are LGBT or who were conceived through artificial means.

For gay kids who come from conservative families, said Gregg Cassin, who counsels gay youth at The Shanti Project in San Francisco, "the schools are a sanctuary. The teachers open up their rooms, and it's a safe place for them."

Mike Brown, director of communications for the archdiocese, attended the hearing but did not speak. He later wrote in an email that Berman and Blacher "well represented the perspective of all religious employers."

He added that the labor negotiations "are ongoing and it is important to respect the seriousness and confidentiality of those negotiations."

Ting concluded the meeting by saying, "We don't believe when you enter these schools you leave part of yourself at the door. I think we want to make sure that all the rights we have fought for are continued."

"We're trying to strike a balance and be respectful" of an institution's religion, he continued. "But people have their rights."

[Mandy Erickson is a freelance writer based in the San Francisco Bay Area.]

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