No. 21-144

In the Supreme Court of the United States

SEATTLE'S UNION GOSPEL MISSION, *Petitioner*,
v.
MATTHEW S. WOODS, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, WORLD VISION, INC. (U.S.), AGUDATH ISRAEL OF AMERICA, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, BELLEVUE CHRISTIAN SCHOOL, CRISTA MINISTRIES, ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, INTER-VARSITY CHRISTIAN FELLOWSHIP/USA, NORTHWEST DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, NORTHWEST UNIVERSITY, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, AND SEATTLE CHRISTIAN SCHOOL AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the First Amendment protects Seattle's Union Gospel Mission's right to hire coreligionists.

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INTEREST OF *AMICI CURIAE*

Amici are nationwide religious denominations and associations with millions of members, religious educational institutions and service programs in the State of Washington, and international religious humanitarian nonprofits headquartered in the State. They represent different faith backgrounds and traditions, but all are united in the view that religious organizations must be allowed to operate in accord with their religious faiths. A religious organization's ability to maintain religion-based conduct standards for its employees is of special concern to *amici*, who share an interest in advocating for the preservation of religious freedom in the United States.

Amici are the General Conference of the Seventh-day Adventists, World Vision, Inc. (U.S.), Agudath Israel of America, Association of Christian Schools International, Bellevue Christian School, CRISTA Ministries, Ethics and Religious Liberty Commission of the Southern Baptist Convention, InterVarsity Christian Fellowship/USA, Northwest District Council of the Assemblies of God, Northwest University, Union of Orthodox Jewish Congregations Of America, and Seattle Christian School.*

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* Pursuant to Rule 37.2(a), *amici* provided timely notice of their intention to file this brief. All parties have consented. In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

INTRODUCTION

This case should not have been difficult. The facts are all undisputed: Seattle's Union Gospel Mission is a Christian ministry that has helped the homeless for nearly a century. By all measures, it has been extraordinarily successful in fulfilling that goal. It feeds the hungry, cares for the addicted, and gives shelter to those turned away everywhere else. It also shares the Gospel. The Mission derives its purpose from its faith, which is at the center of all its work. Its faith is what unites the Mission. Without the ability to organize around that faith, the organization would no longer exist in any meaningful way.

A lawyer, Matthew Woods, disagreed with how the Mission understood its faith. Knowing that he did not adhere to the Mission's religious requirements for employees—including attending church and following the Mission's Biblical view of sexual relations—Woods applied to work in its legal clinic anyway. The Mission hired an applicant who fulfilled the religious requirements and tried to help Woods find similar secular employment. He sued.

State law should have provided an easy resolution. Like similar state and federal laws, Washington's anti-discrimination law exempts religious nonprofits. See Pet. App. 202a–251a. But in a convoluted ruling brimming with hostility toward the Mission's religious beliefs, the Washington Supreme Court gutted the exemption, holding that the state constitution invalidated the exemption *unless* Woods would have been considered a "minister." As a matter of federal constitutional law, the court held that the Mission's desire to hire those who share its beliefs is protected by the First Amendment only if Woods would have

qualified as a "minister" under the "ministerial exception test." *Id.* at 22a.

So the court remanded, purportedly for application of that test. Yet the court all but ordered the trial court to find that Woods would not have been a minister. *Id.* at 21a–22a. The court pointed to the concurrence's "helpful" analysis, which said that the facts "strongly support a conclusion that [the position] cannot qualify for the ministerial exception." *Id.* at 21a, 30a (Yu, J., concurring). That opinion "forewarned" religious institutions adhering to the Mission's view of sexual relations that if they continued "to exclude the LGBTQ+ community" from religious employment, "[t]his court" will "carefully evaluate claims that a particular employee" is a minister. *Id.* at 25a–26a. Despite the remand-in-name-only, the court's legal error—its limitation of a religious organization's right to make religious employment decisions to ministers—is final and threatens immediate harm.

The decision below cannot be squared with this Court's precedents or the decisions of other courts. The First Amendment right of religious autonomy has never been limited to the hiring and firing of ministers. That view of religious autonomy is exactly backwards. The ministerial exception is one application of the long-established religious autonomy doctrine, which broadly protects religious beliefs, administration, and governance from judicial interference. This doctrine protects religious organizations in many ways other than their selection of ministers. And one of those ways is a right to control internal administration regarding religious matters. Thus, the Mission's decision to hire only those who share and live out its religious beliefs is an aspect of religious autonomy protected by the Constitution.

If left in place, the decision below would threaten the ability of religious organizations to fulfill their missions. Many religious organizations depend on a common culture, which derives from a shared spiritual identity. Shared beliefs, authenticated by shared conduct standards, enable such organizations to advance a common mission. Beyond conduct standards, such organizations often have religious components in the workplace, from prayer to devotional Scripture study to regular worship services. Under the decision below, both conduct standards and religious practices at work could lead to substantial liability. No longer could religious organizations hire those who adhere to their beliefs and live like it. In short, religious organizations would become essentially secular workplaces. They, their missions, and those they serve would suffer.

Finally, the decision below would lead to significant conflicts over the ministerial exception itself. Religious organizations that wanted to maintain their religious cultures would be incentivized to shoehorn employees into the category of ministers. The threat of liability would thus exert significant pressure on religious structure and governance. This pressure would be worsened by the high-stakes nature of the resulting litigation, as the only two options would be minister status and near-total protection for the employer, or secular status and loss of employer prerogative. If religious organizations must try to classify more employees as ministers, the employees so classified will have no statutory employment protections. And if religious organizations do not (or cannot) classify as ministers those employees whose religious commitment matters, their religious employment decisions will be subject to continual second-guessing

by state courts and local discrimination commissions. If the decision below stands, the judiciary similarly would be inundated with all-or-nothing ministerial exception controversies. Both the Free Exercise Clause and the Establishment Clause counsel against this type of sustained judicial interference in religious affairs. A writ of certiorari should be granted.

REASONS FOR GRANTING THE WRIT

I. The First Amendment broadly protects religious employment decisions.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Together, the Free Exercise and Establishment Clauses "give[] special solicitude to the rights of religious organizations." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 189 (2012). They preserve "a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs." *Id.* at 199 (Alito, J., concurring, joined by Kagan, J.). And part of that autonomy—recognized by many courts but disregarded by the one below—is the right to make religious employment decisions.

A. Religious autonomy is not limited to the ministerial exception.

The decision below's limitation of autonomy in religious employment decisions to "ministers" contradicts this Court's religious autonomy precedents. This Court has long recognized that the Religion Clauses prohibit courts from intervening in matters of religious "discipline, or of faith, or ecclesiastical rule, custom, or law." *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871). This religious

autonomy doctrine encompasses the "right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine." *Id.* at 728–29. "All who unite themselves to such a body do so with an implied consent to [its] government" as to "ecclesiastical" questions. *Id.* at 729.

Accordingly, "civil courts" may not resolve "controversies over religious doctrine and practice." *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Under this religious autonomy doctrine, religious organizations have "a spirit of freedom," "an independence from secular control or manipulation": the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952).

Though many of the Court's early cases involved property disputes, another "component of [religious] autonomy is the selection of the individuals who play certain key roles." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). Under this doctrine, known as the "ministerial exception," "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Ibid.* It does not matter if the ministerial employment decision was "made for a religious reason"; the exception bars all employment discrimination claims by a minister, whatever the reason. *Hosanna-Tabor*, 565 U.S. at 194–95. And the doctrine bars other claims involving ministers, too. See *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929) ("[I]t is the function of the church authorities to

determine what the essential qualifications of a chaplain are and whether the candidate possesses them."); *Serbian E. Orthodox Diocese for U.S. of America & Canada* v. *Milivojevich*, 426 U.S. 696, 709 (1976) (explaining that courts cannot resolve a "religious dispute over [a bishop's] defrockment").

But—and this is the critical point—religious autonomy in employment and association is not limited to the ministerial exception. *Another* aspect of religious autonomy is the right of a religious organization to hire those who share its beliefs and will contribute to a shared culture of faith, conduct, and mission. This Court has long recognized that civil courts "have no power to revise or question ordinary acts of church discipline, or of excision from membership." *Bouldin* v. *Alexander*, 82 U.S. (15 Wall.) 131, 139 (1872). And it has repeatedly applied an analogous understanding to religious organizations and their employees, including non-minister employees, when matters of religious doctrine are at stake.

For instance, in *NLRB* v. *Catholic Bishop of Chicago*, this Court considered several NLRB actions against religious schools for refusing to bargain with non-ministerial faculty. 440 U.S. 490, 491–94 (1979). The Court agreed that the exercise of jurisdiction by the NLRB could "impinge upon the freedom of church authorities to shape and direct teaching in accord with the requirements of their religion." *Id.* at 496. NLRB investigations "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Id.* at 502. The Court emphasized that both "the conclusions that may be reached by the Board" and "the very process of inquiry" "may impinge

on rights guaranteed by the Religion Clauses." *Ibid.* Thus, the Court read the National Labor Relations Act to exclude such teachers.

This decision, like several Courts of Appeals cases discussed *infra* Part I.B, ultimately purported to rest on statutory grounds. But these grounds may deviate from modern interpretive principles, and in any event, the cases should be read for the constitutional principles on which they rely. See, *e.g.*, *Catholic Bishop*, 440 U.S. at 504 ("Admittedly, Congress defined the Board's jurisdiction in very broad terms; we must therefore examine the legislative history of the Act to determine whether Congress contemplated that the grant of jurisdiction would include teachers in such schools.").

Next, in *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, the Court considered a Title VII claim by a Mormon nonprofit gym's building engineer, who had been fired after failing to "observe the Church's standards in such matters as regular church attendance, tithing, and abstinence from coffee, tea, alcohol, and tobacco." 483 U.S. 327, 330 & n.4 (1987). The Court held that Title VII's exemption of religious nonprofits did not violate the Establishment Clause. *Id.* at 330. The Court's consideration was premised on the assumption that the First Amendment *requires* such an exemption for religious organizations. The Court recognized that the exemption "alleviate[s] significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Id.* at 339. In other words, the exemption "lift[s] a regulation that burdens the exercise of religion" protected by the First Amendment. *Id.* at 338.

Moreover, any dispute about the religious nature of the employee's duties was constitutionally irrelevant because he was fired for a religious reason. As the Court explained, it would be "a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious." *Id.* at 336. And allowing such employment claims to proceed on a civil court's understanding of the organization's "religious tenets and sense of mission" would impermissibly "affect the way an organization carried out what it understood to be its religious mission." *Ibid.* In the words of Justice Brennan's influential concurrence, "[a] case-by-case analysis for all [a religious organization's] activities therefore would both produce excessive government entanglement with religion and create the danger of chilling religious activity." *Id.* at 344 (Brennan, J., joined by Marshall, J., concurring in the judgment).

In sum, when a religious organization makes an employment decision for a religious reason, judicial "interference with [that] internal [religious] decision" necessarily affects the organization's "faith and mission." *Hosanna-Tabor*, 565 U.S. at 190. And the Free Exercise Clause "protects a religious group's right to shape its own faith and mission through its appointments," while the Establishment Clause "prohibits government involvement in such ecclesiastical decisions." *Id.* at 188–89. Because there is no dispute here that the Mission "based its employment decision on a sincere religious belief," Pet. App. 56a, this Court's precedents are clear: the suit cannot proceed. Review of the contrary decision below is necessary.

B. The decision below breaks with other courts by limiting religious employment autonomy to the ministerial exception.

Decisions from many Courts of Appeals follow this Court's lead in recognizing the constitutional problems with prohibiting religious organizations from hiring based on religion. For example, the Sixth Circuit considered a Baptist college's termination of a student services employee whose "views on homosexuality" and leadership in a heterodox church "were inconsistent with [the beliefs] of the Southern Baptist Convention." *Hall* v. *Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 623 (CA6 2000). Though the court was applying Title VII's religious exemption, it recognized that this exemption stemmed from "the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions." *Ibid.* Ruling for the college, the court emphasized that "the First Amendment does not permit federal courts to dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices." *Id.* at 626.

Many other Courts of Appeals agree that "attempting to forbid religious discrimination against non-minister employees where the position involved has any religious significance is uniformly recognized as constitutionally suspect, if not forbidden." *Little* v. *Wuerl*, 929 F.2d 944, 948 (CA3 1991); see also *EEOC* v. *Mississippi College*, 626 F.2d 477, 485 (CA5 1980) (relying on "the rights guaranteed by the religion clauses" to hold that the EEOC could not second-guess a religious college's "evidence that the challenged employment practice resulted from discrimination on the basis of religion"); *Fratello* v. *Archdiocese of New York*, 863 F.3d 190, 197 n.15 (CA2 2017) (explaining

that a discrimination suit could not be maintained "[h]ad a religious reason been proffered" for the termination, regardless of the employee's minister status); *Spencer* v. *World Vision, Inc.*, 633 F.3d 723, 724 (CA9 2011) (holding that administrative staffers could not bring Title VII claims against a Christian humanitarian organization, and noting that "even absent the exemption for religious organizations, the First Amendment would limit Title VII's ability to regulate the employment relationships within churches and similar organizations," *id.* at 728 (O'Scannlain, J., concurring) (cleaned up)); *Kennedy* v. *Saint Joseph's Ministries, Inc.*, 657 F.3d 189, 190–91, 195 (CA4 2011) (upholding right of religious nonprofit to terminate an employee for wearing garb associated with another church); *Bryce* v. *Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 660 (CA10 2002) ("When a church makes a personnel decision based on religious doctrine," "the courts will not intervene."); *Killinger* v. *Samford Univ.*, 113 F.3d 196, 201 (CA11 1997) (upholding right of religious college to terminate professor due to difference in theological views and emphasizing "First Amendment concerns").

But the Washington Supreme Court carved its own path. The court agreed with Woods that if the ministerial exception "is not implicated, all employers, whether secular or religious, do not have a First Amendment right to engage in employment discrimination." Appellant's Second Am. Answer to Brs. of *Amici Curiae* 15–16 (Wash. S. Ct. No. 96132-8), https://bit.ly/3k8SPVx; see Pet. App. 22a.

This conflict between the decision below and all other courts to consider this issue demands this Court's review. Not only does the decision below create a conflict on a major constitutional issue, it would have

severe consequences for religious organizations of all types.

II. The decision below threatens the ability of religious organizations to fulfill their missions.

The decision below eviscerates in Washington the federal constitutional guarantee of religious autonomy. Under its unprecedented standard, religious organizations could not impose religious job requirements crucial to preserving their religious cultures and accomplishing their religious missions. Neither could they further their culture by engaging in shared religious expression in the workplace. The First Amendment does not sanction this result.

A. Religious organizations depend on cultures unified by shared beliefs and conduct to advance their missions.

Many (if not most) religious organizations foster religious cultures to promote their missions. And one of the primary ways to create such a culture is to "maintain communities composed solely of individuals faithful to [the organization's] doctrinal practices, whether or not every individual plays a direct role in the organization's religious activities." *Curay-Cramer* v. *Ursuline Acad. of Wilmington, Delaware, Inc.*, 450 F.3d 130, 141 (CA3 2006) (cleaned up). Only with a unified culture of shared beliefs, validated by common religious standards of conduct, can these organizations advance their beliefs and minister to their members and communities.

A religious culture is often crucial to the faith-based missions of religious institutions. It is "a means by which a religious community defines itself." *Amos*, 483 U.S. at 342 (Brennan, J., concurring in the

judgment). Such a culture promotes the strength of relationships among believers, ensures that the organization engages in activities allowed under its doctrine, and preserves the autonomy of the organization. See Christopher C. Lund, *In Defense of the Ministerial Exception*, 90 N.C. L. Rev. 1, 4–5 (2011). And it helps the organization fulfill its mission, "unit[ing]" employees "in mind and thought" toward a shared goal. 1 Corinthians 1:10. As for authenticating conduct, many Christian institutions follow the admonition that "whoever says he abides in [Christ] ought to walk in the way in which He walked." 1 John 2:6.

A religious culture is not created by accident. To have an atmosphere "permeated with religious overtones," a religious organization intentionally "recruits" employees who share its faith and its passion for the "religious mission." *Hall*, 215 F.3d at 625. That religious institutions sometimes have positions with secular-sounding job titles "does not transform the institution into one that is secular." *Ibid.* In many religious organizations, most or all employees play a "critical and unique role . . . in fulfilling the mission of the" organization. *Catholic Bishop*, 440 U.S. at 501. Religious cultures "are borne out of the voluntary choices" of employees to work in the religious environment and "pursue shared religious values." Michael A Helfand, *Religious Institutionalism, Implied Consent, and the Value of Volunteerism*, 88 So. Cal. L. Rev. 539, 564 (2015). In short, a religious organization "rel[ies] on employees to do the work of the [organization] and to do it in accord with [its religious] teaching." Douglas Laycock, *Towards A General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to*

Church Autonomy, 81 Colum. L. Rev. 1373, 1409 (1981).

To accomplish their missions and prevent drifting from core religious values, religious organizations often require employees to affirm and abide by a set of religious beliefs. See Peter Greer & Chris Host, *Mission Drift* 47–48 (2014). Employees may also be expected to participate in religious activities like "prayer [sessions] and chapel[s]." *Hall*, 215 F.3d at 625. Religious activities required by the religious organization "often involve[] not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons" such as worship, proselytizing, or other religious conduct. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (cleaned up).

That is because most faiths believe that creed should affect conduct and that beliefs are validated by lifestyle—in and out of work. An organization whose employees openly disbelieve or disregard its religious teachings will struggle to convey the importance and truth of those teachings to others. The First Amendment does not force religious organizations to appear hypocritical. Cf. *Korte* v. *Sebelius*, 735 F.3d 654, 679 (CA7 2013) ("[T]he Free Exercise Clause protects not just belief and profession but also religiously motivated conduct.").

Nowhere is this more fundamental than in the context of the religious organization's community conduct standards. For instance, many religious traditions consider a religiously based sexual ethic to be among the important qualifications for membership. The Mission here has such a belief. To protect these community standards and to promote the

flourishing of the religious environment, the religious autonomy doctrine ensures that religious organizations can impose religious requirements when hiring employees. The First Amendment does not allow "[d]issenters" to "use the coercive force of the government to compel a change in the [religious organization]'s religious views, practices, or governance." Christopher C. Lund, *Free Exercise Reconceived: The Logic and Limits of* Hosanna-Tabor, 108 Nw. L. Rev. 1183, 1194 (2014).

B. The decision below would expose religious organizations to claims against their ministries and missions.

If left in place, the decision below would turn these protections upside down, permitting individuals who are not members of a religious faith to pursue relief in civil court and upend the governance of religious institutions from the outside. "If the government coerced staffing of religious institutions by persons who rejected or even were hostile to the religions the institutions were intended to advance, then the shield against discrimination would destroy the freedom of Americans to practice their religions." *World Vision*, 633 F.3d at 742 (Kleinfeld, J., concurring). The decision below would also put civil authorities in direct conflict with ecclesiastical governance.

By eliminating protections for religious hiring, the decision below would reduce religious organizations to functionally secular workplaces. The organization could not limit its hiring to coreligionists. And non-ministerial employees could make claims for discrimination when subjected to prayers, worship, and other overtly religious expressions in the workplace. See *Shapolia* v. *Los Alamos Nat'l Lab'y*,

992 F.2d 1033, 1036 (CA10 1993) (collecting cases for the proposition that "Title VII has been interpreted to protect against requirements of religious conformity"). Even discussions of the organization's beliefs could be viewed as creating a hostile work environment. Courts have found against employers on this very basis when Title VII's religious exemption did not apply. See, *e.g.*, *EEOC* v. *Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 613 (CA9 1988) (involving religious devotions); *EEOC* v. *Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763, 811–12 (SD Ind. 2002) (same).

In short, religious organizations would disappear in their present form. Religious organizations "would have to hire people utterly inconsistent with their mission and utterly opposed to their values." Lund, *In Defense of the Ministerial Exception*, *supra*, at 30. Logically, the Washington Supreme Court's ruling would force a Sunni community center to hire a Shia director, a Jewish homeless shelter to hire a Satanist, and a Christian school to hire an atheist history teacher. Skyrocketing litigation would ensue. And employment insurance would likely disappear as religious organizations face liability for damages and attorney's fees for most employment positions. The religious autonomy doctrine protects little indeed if the law permits suit by an individual without a professed belief in the organization's religion, whose conduct violates the organization's religious lifestyle requirements, and whose goal is to "protest" those standards. Pet. App. 127a, 189a–191a, 195a–196a.

Not only would the consequences of the decision below infringe on Free Exercise, they also raise Establishment concerns. "It is difficult to imagine an area of the employment relationship *less* fit for scrutiny by secular courts" than review of whether an

"employee's beliefs or practices make her unfit to advance [a religious organization's] mission." *Wuerl*, 929 F.2d at 949. Litigation over what employment duties have sufficient "religious meaning" would "touch[] the very core of the constitutional guarantee against religious establishment." *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133 (1977). As discussed, employees who are not "ministers" are often critical to the religious nature of the organization. And "courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000) (plurality opinion); see also *Curay-Cramer*, 450 F.3d at 141 (explaining that courts should not "meddl[e] in matters related to a religious organization's ability to define the parameters of what constitutes orthodoxy"). The decision below cannot stand.

III. The decision below would lead to confusion and conflict over the ministerial exception.

Finally, the decision below will corrode this Court's ministerial exception jurisprudence. By classifying all roles at religious organizations as either ministerial or secular, that decision will perversely incentivize many organizations who wish to maintain their religious culture to try to fit employees into the ministerial exception. Not only would this require religious organizations to change their structure and governance, it would lead to high-stakes controversies where both employers and employees would have all-or-nothing constitutional protections. And the courts would have to resolve innumerably more cases about the ministerial exception—which could prompt a watering-down of that exception.

1. The decision below would incentivize religious employers to shoehorn as many employees as possible into the category of "ministers," exerting coercive pressure on their internal structure and governance. Only by labeling employees as "ministers" could they maintain religious hiring practices and thus religious cultures. In this respect, "[f]ear of potential liability" would "affect the way an organization carried out what it understood to be its religious mission." *Amos*, 483 U.S. at 336. Such coercion and uncertainty impose a "significant burden" on the organization, *ibid.*, and would result in the religious "community's process of self-definition [being] shaped in part by the prospects of litigation," *id.* at 343–44 (Brennan, J., concurring in the judgment). Yet "the Free Exercise Clause protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 137 S. Ct. 2012, 2022 (2017) (cleaned up).

2. The decision below would also lead to high-stakes, all-or-nothing controversies for both religious employers and employees. Under current law, religious organizations have an absolute right to hire and fire ministers because "the First Amendment has struck the balance for us." *Hosanna-Tabor*, 565 U.S. at 196. This right precludes many employment claims, including those alleging a hostile work environment. See, *e.g.*, *Demkovich* v. *Saint Andrew the Apostle Parish*, 3 F.4th 968, 978 (CA7 2021) ("Because ministers and nonministers are different in kind, the First Amendment requires that their hostile work environment claims be treated differently.").

Meanwhile, religious organizations' employment of non-ministers is subject to state and federal laws, unless (as here) the employment issue implicates the

organization's religious autonomy. While the religious autonomy doctrine "prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity," it "does not apply to purely secular decisions, even when made by churches." *Bryce*, 289 F.3d at 655, 657.

The decision below would disrupt that compromise. If religious organizations must classify all religiously significant employees as ministers, those employees will not have statutory protections. And if religious organizations do not classify (or are prevented from classifying) those employees as ministers, the organizations' religious personnel decisions will be subject to second-guessing by state and local governments. This approach unnecessarily raises the stakes of these cases and puts pressure on all involved.

3. The approach of the decision below would also increase pressure on the judiciary. It would inundate courts with ministerial exception controversies. Already this Court has decided multiple ministerial exception cases in the last decade, and the lower courts continue to confront the exception in ever-expanding areas of law as intrusions on religious organizations grow. Yet this Court has recognized that the ministerial analysis can itself intrude on religious autonomy. "In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady*, 140 S. Ct. at 2066. Accordingly, the "religious institution's explanation of the role of such employees in the life of the religion in question is important." *Ibid.* The decision below would trigger this intrusive analysis repeatedly.

Moreover, if more employees are classified as ministers, the temptation will be for judges to water down the ministerial exception. Just look at the decision below, which commends as "helpful" a concurrence that explicitly "forewarned" religious organizations that maintain a traditional view of marriage and sexual relations that the court will give their ministerial exception claims an especially hard look. Pet. App. 21a, 25a–26a. And any such watering-down would only further undermine the religious autonomy that the First Amendment decisively protects.

The last thing *amici* and other religious organizations want to do is litigate over whether or how they may conduct their ministries. But the ongoing expansion of the administrative state, coupled with increased polarization around issues of religion, means that religious organizations will find themselves in these legal disputes—unless this Court demarcates clear boundaries regarding religious autonomy.

* * *

In sum, under the framework of the decision below, religious organizations face a Hobson's choice: they can give up their religious cultures or label every employee a minister and risk endless litigation and potential devaluation of the ministerial exception itself. That litigation would entangle the courts in "assessing the relative significance" of many religious roles. *Blue Hull Mem'l Presbyterian Church*, 393 U.S. at 450. Either way, the Washington Supreme Court's decision disregards the "spirit of freedom" that the religious autonomy doctrine radiates. *Kedroff*, 344

U.S. at 116. And it contradicts longstanding precedent preserving ecclesiastical independence.

The circuits' recognition of a religious autonomy right to make religious employment decisions provides a much better path forward. This Court's application of religious autonomy here would ensure that all religious organizations can maintain religious cultures without fear of government intervention that would prevent them from pursuing their missions.

CONCLUSION

In word and judgment, the decision below evinces "special hostility for those who take their religion seriously, who think that their religion should affect the whole of their" organizations. *Mitchell*, 530 U.S. at 827–28. But the First Amendment protects a religious organization's right to be just that—religious. And "[f]urthering [a religious organization's] religious freedom also furthers individual religious freedom." *Hobby Lobby*, 573 U.S. at 709 (cleaned up). The Court should grant the petition.

Respectfully submitted,

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