No. 21-145

In the Supreme Court of the United States

GORDON COLLEGE, et al.,
Petitioners,

v.

MARGARET DEWEESE-BOYD,
Respondent.

On Petition for Writ of Certiorari to the Supreme Judicial Court of Massachusetts

BRIEF FOR NEBRASKA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, GEORGIA, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, OHIO, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the States of Nebraska, Alabama, Alaska, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, and West Virginia. We file this brief in support of the petitioners and assert two interests.

First, amici seek to protect the First Amendment rights of religious institutions. Among those rights is the freedom to make employment decisions concerning key personnel without governmental interference. Using state employment law to punish religious schools for those decisions jeopardizes that freedom. The Massachusetts Supreme Judicial Court's reasoning narrowly defines the class of professors at religious institutions who qualify for the ministerial exception, and in so doing, threatens to override the First Amendment rights of faith-based universities.

Second, amici also have an interest in protecting their enforcement agencies and courts from excessive entanglement in the internal affairs of religious organizations. Clear jurisprudence on the ministerial exception is critical to achieving this goal because when the standards are clear, those agencies and courts can dismiss discrimination complaints brought by ministerial employees earlier in the process before entanglement occurs. The Massachusetts ruling is especially problematic because it (1) creates doctrinal ambiguity through its strained effort to confine this Court's holding in *Our Lady of Guadalupe School* v.

[1] As required by Supreme Court Rule 37.2(a), amici timely notified the parties of their intent to file this brief.

Morrissey-Berru, 140 S. Ct. 2049 (2020), (2) applies standards that require States to dive deeply into the spiritual affairs of religious schools, and (3) illegitimately distinguishes religious instruction on spiritual issues from religious instruction on secular topics.

For these reasons, amici ask this Court to grant review or summarily reverse the lower court's decision.

SUMMARY OF THE ARGUMENT

I. The First Amendment protects the autonomy of religious organizations, and the ministerial exception guarantees those groups' freedom from governmental oversight when selecting and managing certain key employees. To determine whether the exception applies, courts must focus on, as this Court did in *Our Lady*, the organization's religious mission and the plaintiff employee's importance in achieving it.

Under that standard, the ministerial exception covers Respondent Margaret DeWeese-Boyd. Her primary duties include (1) teaching religious principles while instructing students on social work and (2) participating in the spiritual formation of her students. Petitioner Gordon College is an undisputedly Christian university that considers these duties essential to its religious mission of instilling both intellectual maturity and Christian character in its students. The Massachusetts Supreme Judicial Court should have respected that reasonable religious judgment and declined to interject itself into this personnel dispute.

II. But the Massachusetts court chose a different course, holding that the ministerial exception does

not apply to DeWeese-Boyd's position. It reached that conclusion only by systematically failing to follow this Court's guidance. These failures manifest themselves in at least six ways.

First, the court below did not ask the fundamental question posed in *Our Lady*—whether the teacher's duties are vital to carrying out the school's religious mission. Instead, it adopted a rigid, checklist-based analysis reminiscent of what this Court has repeatedly condemned.

Second, and relatedly, the Massachusetts ruling did not show proper respect for Gordon's reasonable view that DeWeese-Boyd's duties are critical to the school's religious mission.

Third, the decision below hinged on a supposed distinction between religious instruction solely on religion and religious instruction on secular topics. The lower court discounted the mixing of religious and secular instruction as insufficiently spiritual to warrant ministerial protection, but the First Amendment forbids courts from making those kinds of value judgments.

Fourth, the state court treated the duty of leading students in prayer or other devotional exercises as a prerequisite to attaining ministerial status. *Fifth*, the decision under review arbitrarily constrained *Our Lady*'s holding, which announced broad protection for the First Amendment rights of religious schools. *Sixth*, the lower court distorted the implications of ruling for Gordon, implausibly claiming that such a decision would extend ministerial protection to all employees at all religious institutions.

III. Amici States are keenly interested in this case because our administrative agencies and courts are active in enforcing and applying the kinds of employment-nondiscrimination laws that DeWeese-Boyd invokes here. Illustrating the breadth of that involvement, consider that our agencies investigate discrimination complaints, issue discovery requests, compel discovery production, issue probable-cause determinations, oversee mediation, and adjudicate claims. These duties present risks of church-state entanglement whenever complaints are filed against faith-based organizations.

The Massachusetts decision significantly expands these entanglement concerns. It does so by shrinking the class of religious-school teachers that qualify as ministerial and by creating analytical ambiguity on how to apply the ministerial exception. In addition, the opinion assigns decisive relevance to (1) a teacher's duty to lead students in prayer or other devotional exercises and (2) the intermingling of religious instruction with secular topics, thereby requiring States to explore these religious matters before dismissing complaints under the ministerial exception. Because the Massachusetts decision greatly increases the risks of church-state entanglement, this Court should grant review or summarily reverse.

REASONS FOR GRANTING THE PETITION

I. This Court's precedents dictate that the ministerial exception applies in this case.

When evaluating attempts to invoke the ministerial exception, this Court focuses on the defendant's religious mission and the plaintiff's importance in achieving it. Under that test, the exception applies in

this case because DeWeese-Boyd's teaching and mentorship roles are essential to Gordon's mission of religious education and spiritual formation.

A. Ministerial-exception analysis focuses on the organization's religious mission and the plaintiff's importance in achieving it.

This Court has long recognized that the First Amendment protects the autonomy of religious organizations. It ensures their freedom "to decide for themselves, free from state interference, matters of [internal] 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).

The ministerial exception is rooted in these autonomy principles, as this Court recognized in *Hosanna-Tabor Evangelical Lutheran Church & School* v. *E.E.O.C.*, 565 U.S. 171, 185–87 (2012). Punishing a religious group for failing "to accept or retain an unwanted minister," *Hosanna-Tabor* explained, "intrudes upon more than a mere employment decision." *Id.* at 188. "Such action interferes with the internal governance" of the organization, depriving it "of control over the selection of those who will personify its beliefs." *Ibid.* The ministerial exception's purpose, then, is to "protect[] a religious group's right to shape its own faith and mission through its appointments" of vital personnel. *Ibid.*

Hosanna-Tabor considered "all the circumstances of [the plaintiff's] employment" and decided that she qualified for the exception. *Id.* at 190. The opinion highlighted four factors relevant there: (1) the plaintiff's "formal title," (2) "the substance" including reli-

gious education "reflected in that title," (3) the plaintiff's "own use of that title," and (4) "the important religious functions she performed." *Id.* at 192. But the Court refused "to adopt a rigid formula for deciding when an employee qualifies as a minister." *Id.* at 190.

The Court elaborated on this further in *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 140 S. Ct. 2049 (2020). Picking up where *Hosanna-Tabor* left off, *Our Lady* reiterated that the test for deciding whether an employee attains ministerial status is not a rigid checklist. *E.g.*, *id.* at 2055 (eschewing "a rigid formula"); *id.* at 2062 (same). Rather, courts must determine, based on "all relevant circumstances," whether the "position implicate[s] the fundamental purpose of the exception." *Id.* at 2067. That purpose, again, is to protect religious organizations' freedom to make "internal management decisions that are essential to the institution's central mission," including "the selection of the individuals who play certain key roles." *Id.* at 2060.

Thus, the proper analysis, as *Our Lady* demonstrates, revolves around the religious organization's core mission. *Id.* at 2066 ("Educating and forming students in the . . . faith lay at the core of the mission of the schools where they taught"). And the relevant question is whether the plaintiff plays a vital "role in . . . carrying out [that] mission." *Id.* at 2063 (quoting *Hosanna-Tabor*, 565 U.S. at 192); *see also ibid.* (considering "the importance attached to [the plaintiff's] role"); *id.* at 2069 n.1 (Thomas, J., concurring) (explaining that the ministerial exception extends to employees "entrusted with carrying out the religious

mission of the organization"). That depends on whether the employee performs tasks that "lie at the very core of the mission." *Id.* at 2064. And the organization's view that the employee "play[s] a vital part in carrying out the mission . . . is important"—and must not be lightly overridden—because "judges cannot be expected to have a complete understanding and appreciation of the role played by every person" in every religious organization. *Id.* at 2066.

The *Our Lady* dissent confirmed all these aspects of the Court's opinion. The dissent recognized that the majority focused on "a single consideration: whether [the school] thinks its employees play an important religious role." *Id.* at 2072 (Sotomayor, J., dissenting). When deciding that question, the majority deemed the schools "in the best position to explain" the "functional importance" of their employees' role. *Id.* at 2076. The ministerial exception thus applies, the dissent observed, when a school reasonably "determines that an employee's 'duties' are 'vital' to 'carrying out the mission of the [school].'" *Id.* at 2082 (quoting *id.* at 2066); *see also id.* at 2081 (characterizing the majority opinion as holding that teachers are "'ministers' of the Catholic faith . . . because of their supervisory role over students in a religious school").

B. DeWeese-Boyd's teaching and mentorship roles are vital to Gordon's mission of religious education and spiritual formation.

Under the analysis established in *Our Lady* and *Hosanna-Tabor*, the ministerial exception bars DeWeese-Boyd's suit. The analysis must start, as *Our Lady* shows, with Gordon's mission. According to its

mission statement, Gordon's purpose is to instill "intellectual maturity and Christian character" in its students. Pet. App. 133a. To achieve these objectives, Gordon has dedicated itself to, among other things, "[s]cholarship that is integrally Christian" and "[t]he maturation of students in all dimensions of life: body, mind and spirit." *Ibid.*

Gordon's faculty are key to advancing this mission. As the court below recognized, Gordon's handbook requires faculty to "promot[e] understanding of their disciplines from the perspectives of the Christian faith," "help[] students make connections between course content, Christian thought and principles, and personal faith and practice," and "encourag[e] students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection." Pet. App. 24a–25a; *see also id.* at 118a–19a (same). The school also assigns faculty the duty to "participate actively in the spiritual formation of . . . students" and "engage . . . students in meaningful ways to strengthen them in their faith walks." *Id.* at 26a. These tasks "lie at the very core of [Gordon's] mission." *Our Lady*, 140 S. Ct. at 2064.

Gordon left no doubt that it considers these religious-integration and spiritual-formation duties essential to its mission. Concerning the duty to infuse religious principles into their teaching, Gordon's handbook states that "among the tasks of the Christian educator" at Gordon, "none is more important than . . . the integration of faith, lea[r]ning and living." Pet. App. 119a. And emphasizing the duty to shape students' spiritual development, the handbook has affirmed, since before this litigation began, that

faculty members are "ministers to [the] students" because they are "expected to participate actively in the[ir] spiritual formation." *Id.* at 10a.

Further confirming DeWeese-Boyd's ministerial status is her role as a messenger to the students. This Court has recognized that the ministerial exception covers a religious organization's messengers—those charged with "conveying the [group's] message." *Our Lady*, 140 S. Ct. at 2063 (quoting *Hosanna-Tabor*, 565 U.S. at 192); *see also id.* at 2064 ("the exception should include any employee who . . . serves as a messenger . . . of its faith") (quoting *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring)) (cleaned up). "The Constitution leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a . . . messenger of its faith." *Hosanna-Tabor*, 565 U.S. at 202 (Alito, J., concurring).

The facts here establish that DeWeese-Boyd serves as one of Gordon's voices to its students. Again, she is tasked with teaching social work "from the perspectives of the Christian faith" and connecting "course content" to "Christian thought and principles." Pet. App. 118a–19a. Her instruction is thus the school's message to its students on what it means to engage in social work based on Christian principles.

As Justice Alito acknowledged in his *Hosanna-Tabor* concurrence, "[r]eligious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith." 565 U.S. at 200–01. This freedom is critical because, as *Our Lady* recognized, a "wayward"

professor's "teaching" or "counseling could contradict [Gordon's] tenets and lead [students] away from the faith." 140 S. Ct. at 2060. Because DeWeese-Boyd performs crucial teaching and mentoring duties central to the success or demise of Gordon's religious mission, the ministerial exception applies to her.

II. The Massachusetts decision conflicts with this Court's caselaw.

The case for applying the ministerial exception here is compelling—so strong in fact that it is mystifying how the Massachusetts Supreme Judicial Court missed it. The reason why, quite simply, is a systematic failure to heed this Court's guidance in *Our Lady* and *Hosanna-Tabor*. Six legal errors are readily apparent.

A. The decision ignored *Our Lady*'s mission-based ministerial analysis and instead applied a checklist-based approach.

The lower court's most egregious misstep is its failure to apply the analysis prescribed in *Our Lady*. When evaluating whether DeWeese-Boyd is a ministerial employee, the court did not focus on Gordon's mission or the importance of DeWeese-Boyd's role in carrying it out. Rather, it employed a factor-based analysis, considering what DeWeese-Boyd did, her "title" and "training," and whether she "held herself out as a minister." Pet. App. 24a–31a. Based on this flawed foundation, the court proceeded to announce a factor-based holding, declaring that DeWeese-Boyd did not qualify for ministerial status because, among other things, she "was not ordained," "did not view herself as a minister," and did not "participate in or

lead religious services . . . or teach a religious curriculum." *Id.* at 33a.

But *Our Lady* could not have been clearer in denouncing a rigid, checklist-based approach, making that point *no less than five times* in its opinion. *E.g.*, 140 S. Ct. at 2055 (eschewing "a rigid formula"); *id.* at 2062 (same); *id.* at 2067 (criticizing the lower court for "treat[ing] the circumstances that we found relevant in [*Hosanna-Tabor*] as checklist items to be assessed and weighed against each other in every case"); *id.* at 2068 ("[T]here is no basis for treating the circumstances we found relevant in *Hosanna-Tabor* in . . . a rigid manner."); *id.* at 2069 (noting again that *Hosanna-Tabor* "declined to adopt a 'rigid formula'"). Going further still, the Court clarified that the factors considered in *Hosanna-Tabor* need *not* "be met" and are *not* "necessarily important" in other cases. *Id.* at 2063; *see also id.* at 2064 (reiterating that those factors "are not inflexible requirements and may have far less significance in some cases"). Instead, the proper analysis focuses on the school's religious mission and asks whether the employee serves a vital "role in . . . carrying out [that] mission." *Id.* at 2063 (quoting *Hosanna-Tabor*, 565 U.S. at 192). By failing to engage in this kind of analysis, it is no wonder the Massachusetts court missed the mark by a mile.

B. The decision failed to respect Gordon's reasonable view that DeWeese-Boyd plays a vital part in carrying out its mission.

The Massachusetts court's second major mistake followed inescapably from its first. Because it did not ask whether DeWeese-Boyd's tasks are integral to Gordon's religious mission, the court necessarily

failed to recognize the "importan[ce]" of Gordon's view that DeWeese-Boyd "play[s] a vital part in carrying out [its] mission." *Our Lady*, 140 S. Ct. at 2066.

Giving due consideration to the religious school's reasonable views about the employee's role was key to the *Our Lady* opinion. *Ibid.* Even the dissent recognized this about the majority's analysis, correctly observing that the majority deemed religious groups "in the best position to explain" the "functional importance" of each employee's role. *Id.* at 2076 (Sotomayor, J., dissenting). The dissent also concluded that the ministerial exception applies when a religious organization reasonably "determines that an employee's 'duties' are 'vital' to 'carrying out the mission of the [school].'" *Id.* at 2082 (quoting *id.* at 2066).

Here, it is eminently reasonable for Gordon to believe that DeWeese-Boyd's teaching and mentorship duties are central to its religious mission of developing students with intellectual maturity and Christian character. This Court's own caselaw has long "recognized the critical and unique role of the teacher in fulfilling the mission of a church-operated school." *N.L.R.B.* v. *Cath. Bishop of Chicago*, 440 U.S. 490, 501 (1979).

Respecting a religious organization's reasonable views on these spiritual matters is a constitutional imperative. After all, it is "unacceptable" and beyond the judiciary's competence "to question the centrality of particular . . . practices to a faith." *Emp. Div., Dep't of Hum. Res. of Oregon* v. *Smith*, 494 U.S. 872, 887 (1990) (citation omitted). And "judges cannot be expected to have a complete understanding and appreciation of the role played by every person" in every

religious organization. *Our Lady*, 140 S. Ct. at 2066. Thus, courts must defer to a group's reasonable views about the religious significance of its employee's duties. *See Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring) (requiring judicial "[s]olicitude" for a religious organization's determination that "certain activities are in furtherance of [its] religious mission").

Affording respect to these religious judgments does not mean that courts rubber stamp whatever the organization says. Judges must assess whether the group's professions are "sincerely held." *United States* v. *Seeger*, 380 U.S. 163, 185 (1965) (discussing "the threshold question of sincerity which must be resolved in every case"). This sincerity inquiry may include confirming that the employee does in fact perform the duties that the entity identifies as mission critical. But courts cannot simply override the group's view of its religious mission and the importance of the employee in achieving it, as the Massachusetts court did here.

True, the decision below said that "[a] religious institution's explanation of the role of [its] employees in the life of the religion in question is important." Pet. App. 28a (quoting *Our Lady*, 140 S. Ct. at 2066). But the court misapplied that quote, reciting it when evaluating the significance of the "title" or "label" attached to DeWeese-Boyd's position. *Id.* at 28a–29a. In contrast, *Our Lady* instructs courts to respect the religious group's view that the employee's duties are crucial to the organizational mission. 140 S. Ct. at

1066. Massachusetts's high court thus completely missed the point of what *Our Lady* said.

C. The decision dismissed as religiously inferior the kind of teaching that infuses religious principles into discussions of secular topics.

Another significant error is the lower court's attempt to distinguish *Our Lady* on legally indefensible grounds. It said that the teachers in *Our Lady* were different than DeWeese-Boyd because they taught "classes on religion" while she infused religious precepts into her classes on social work. Pet. App. 24a. DeWeese-Boyd's "responsibility to integrate the Christian faith into her teaching, scholarship, and advising," the court explained, "was different in kind, and not degree, from the religious instruction and guidance at issue in *Our Lady*." *Id.* at 33a. By declaring DeWeese's religious instruction "different in kind," the court effectively determined that it was not religious at all—or at least was of categorically lesser religious significance.

Yet this reasoning rests on an unduly constrained view of religion and religious instruction. The teaching of religious principles does not lose its religious character—or become of reduced religious importance—just because it connects those principles to secular topics. A synagogue's discussion night on how best to apply its faith's teachings to care for the poor and orphaned in its local community is plainly religious in nature. So too is DeWeese-Boyd's lectures connecting social work to "Christian thought and principles." Pet. App. 119a. The intermingling of religious and secular instruction does not somehow erase

the religious content and purpose. On the contrary, this Court has consistently assumed the opposite: that religious-school teachers delivering "secular instruction" will "intertwine[]" meaningful "religious doctrine" in what they present. *Cath. Bishop of Chicago*, 440 U.S. at 501 (citation omitted).

Massachusetts's high court veered far outside its legitimate lane by branding as irreligious—or religiously inferior—teaching that connects religious principles to secular topics. It is "inappropriate," explained a Seventh Circuit panel that included then Judge Barrett, for courts to "draw[] a distinction between secular and religious teaching . . . when doing so involves . . . challenging a religious institution's honest assertion that a particular practice is a tenet of its faith." *Grussgott* v. *Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 660 (7th Cir. 2018) (per curiam). "[N]ot only is this type of religious line-drawing incredibly difficult, it impermissibly entangles the government with religion." *Ibid.*; *see also Amos*, 483 U.S. at 343 (Brennan, J., concurring) (noting that often the religious or secular "character of an activity is not self-evident" and that " a searching case-by-case analysis" of that distinction "results in considerable ongoing government entanglement in religious affairs").

Indeed, if the ministerial exception treats pure religious instruction different from integrated religious instruction, that will inevitably lead to judges scrutinizing teachers' curriculum and lectures to determine on which side of the line they fall. But poring over a religious school's curriculum to judge its religiosity is a task unbefitting the judiciary.

Beyond that, devaluing integrated religious teaching as the court below did will result in preferring some faith traditions and religious institutions over others. Under that approach, the First Amendment will favor monastics and separatists that emphasize the study of pure religious doctrine over religious sects that seek to incorporate faith into all aspects of their adherents' lives. Similarly, seminaries devoted to theology will be privileged over institutions like Gordon that incorporate religious teaching into secular topics. The First Amendment does not tolerate such favoritism. *See Larson* v. *Valente*, 456 U.S. 228, 244 (1982) ("[O]ne religious denomination cannot be officially preferred over another."). Because the state court allowed this, its decision should be reversed.

D. The decision treated a duty to lead prayer and other devotional exercises as essential to ministerial status.

In another glaring blunder, Massachusetts's high court viewed the duty of leading student prayer and other devotional exercises as a prerequisite to attaining ministerial status. Pet. App. 24a ("DeWeese-Boyd was not required to, and did not, . . . pray with her students, or attend chapel with her students, like the plaintiffs in *Our Lady* . . . , nor did she lead students in devotional exercises or lead chapel services, like the plaintiff in *Hosanna-Tabor* . . . . We consider this a significant difference."); *id.* at 33a (mentioning the same points in the court's holding). Yet again, such a rigid, checklist-based analysis ignores the lessons of *Hosanna-Tabor* and *Our Lady*.

By elevating prayer and devotional exercises to essential practices, the court below relied on an overly

formalistic view of religion. Without those tasks, the court seemed to think, DeWeese-Boyd is not materially involved in developing her students' faith. But that is simply not true. Her duties include "participat[ing] actively in the spiritual formation of . . . students" and engaging them "in meaningful ways to strengthen . . . their faith walks." Pet. App. 26a. She did this regularly and organically by "attend[ing] services at the chapel . . . with students," *id.* at 128a–29a, "invit[ing]" students to attend "church w[ith] her family," *id.* at 131a, and engaging students in personal "discussion[s] . . . after class," *ibid.* This sort of spiritual mentorship undoubtedly influences students' religious development. Dismissing this mentorship duty, just because it was unaccompanied by mandatory devotional exercises, was grave legal error.

Moreover, "attaching too much significance" to compulsory prayer and chapel attendance "risk[s] privileging religious traditions with formal" means of worship "over those that are less formal." *Our Lady*, 140 S. Ct. at 2064. For instance, under Massachusetts's approach, religious colleges that begin every class with professor-led prayer will receive more constitutional protection than schools like Gordon that do not. Likewise, faith-based institutions that require their professors to regularly recite spiritual texts will have a greater shield against liability. Yet this is deeply concerning because, as discussed above, courts must not adopt an analysis that prefers some "religious denomination[s]" over others, *Larson*, 456 U.S. at 244, and a religious institution's formality should not determine its constitutional protection, *Our Lady*, 140 S. Ct. at 2064.

E. The decision arbitrarily minimized *Our Lady*'s broad holding.

The decision below also conflicts with the broad holding in *Our Lady*. The *Our Lady* opinion opened by acknowledging the broad protection available to religious schools whose mission is the spiritual formation of their students. "The religious education and formation of students," this Court stated, "is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission." *Our Lady*, 140 S. Ct. at 2055. "Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Ibid.* Adding to this, the *Our Lady* opinion closed in similarly sweeping terms: "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." *Id.* at 2069.

This case falls comfortably within *Our Lady*'s broad holding. It is undisputed that Gordon's mission is the "religious education and formation of students." *Id.* at 2055; *see, e.g.*, Pet. App. 133a. And it is undisputed that professors like DeWeese-Boyd have "the responsibility of educating and forming students in the faith." *Our Lady*, 140 S. Ct. at 2069; *see, e.g.*, Pet. App. 118a–19a. So it should have been clear that the ministerial exception bars DeWeese-Boyd's claims.

Although the state court refused to reach that conclusion, it could not help but recognize *Our Lady*'s sweeping holding, acknowledging that it "may be read more broadly" than that court's chosen construction. Pet. App. 34a. But the decision below nonetheless adopted an unduly narrow interpretation that stripped Gordon of its autonomy to select, promote, or decline to promote its professors free from judicial oversight. This was manifest error that warrants reversal.

F. The decision unreasonably characterized the implications of ruling for Gordon.

The lower court's final major misstep was its attempt to caricature the impact of ruling for Gordon. At one point, it suggested that a win for Gordon would likely apply to "all[] religious institutions." Pet. App. 35a. But the main reason why the ministerial exception applies to Gordon is its mandate that professors integrate religious principles into their teaching and participate in the spiritual formation of students. *Id.* at 118a–19a. Because the lower court gave no basis to assume that all other religious institutions impose those same requirements on their faculty, there is no basis to speculate that the ruling here would apply to all religious colleges.

Reaching further still, the Massachusetts ruling also said that if Gordon prevails, the ministerial exception will "apply . . . to all [Gordon's] employees," including "food service workers" and "transportation providers." Pet. App. 34a–35a. Yet this ignores that professors like DeWeese-Boyd have very different duties than cafeteria workers and bus drivers. For example, DeWeese-Boyd is required to include in her instruction a discussion of "Christian thought and

principles." *Id.* at 119a. But nothing suggests that cafeteria employees and bus drivers share that same duty. Nor is it reasonable to assume that they do. In addition, Gordon's professors are its messengers to students in the classroom in a way that these other employees are not. Thus, the attempt to draw an equivalence between these very different groups of employees cannot be credited.

In short, ruling for Gordon would not expand the ministerial exception to cover every employee at every religious university. By claiming that it would, the Massachusetts court held up a fig leaf in a feeble attempt to conceal its indefensible departure from *Our Lady*.

III. The Massachusetts decision undermines States' compelling interest in avoiding entanglement with religious organizations.

Amici States are very involved in enforcing our employment-nondiscrimination laws. We have enforcement agencies—such as human-rights or equal-opportunity commissions—that investigate, mediate, and adjudicate discrimination claims. *E.g.*, Neb. Rev. Stat. § 48-1117. And our courts routinely decide employment disputes. *E.g.*, Neb. Rev. Stat. § 48-1120 (authorizing appeals from commission rulings to state courts); Neb. Rev. Stat. § 48-1120.01 (authorizing litigants to file a discrimination lawsuit directly in state trial courts).

Concerns about church-state entanglement arise whenever citizens file these employment complaints against religious organizations. While States must tread with care in these circumstances, the lower

court's decision makes it more difficult to avoid unconstitutional entanglement.

To begin with, the lower court's reasoning expands the entanglement risks by drastically shrinking the class of religious-school teachers who fall under the ministerial exception. State enforcement agencies and courts will thus be forced to interject themselves in more internal disputes between faith-based institutions and their instructors.

In addition, the possibilities of entanglement multiply the longer a legal dispute progresses through the state system. *See Cath. Bishop of Chicago*, 440 U.S. at 502 (noting that "the very process of [government] inquiry leading to [adjudicative] findings and conclusions" "may impinge on rights guaranteed by the Religion Clauses"). Consider all the administrative and judicial tasks assigned to state enforcement agencies and courts. For instance, agencies "investigate . . . charges of unlawful employment practices," demand "written response[s]" from employers, issue "interrogatories," compel the production of documents, require employers to "make and keep [employment] records," issue "probable cause finding[s]," conduct "mediation[s]" and "arbitration[s]," "hold hearings," and "subpoena witnesses." Neb. Rev. Stat. § 48-1117(1)–(5), 48-1118(1)–(4). And the courts, for their part, referee discovery disputes, compel the production of documents and other information, and ultimately adjudicate employer liability. Each of these successive tasks increases the likelihood that the States will become intertwined with internal religious affairs and sensitive religious questions.

That is why clear contours on the ministerial exception are essential for state agencies and courts charged with these duties. When the law is clear, agencies can quickly issue no-probable-cause determinations, and courts can grant motions to dismiss. Such speedy resolutions, in turn, avoid the entanglement that so often results from document demands, discovery disputes, pretext analysis, and liability determinations.

But the Massachusetts Supreme Judicial Court trades the clarity that *Our Lady* gave for an intricate, checklist-based test that necessitates excessive state probing of religious schools. Under its approach, enforcement agencies and courts cannot dismiss complaints that teachers file against their faith-based institutions until the State first explores (1) whether the teacher's religious instruction is too intertwined with secular discussion to retain its religious significance and (2) whether the teacher engages in mandatory prayer and devotional exercises. But even inquiring into these religious matters, as explained above, demands the very kind of entanglement that the First Amendment forbids.

Reversing the Massachusetts decision would avoid all that. It would establish that no State must delve so deeply into a faith-based school's religious affairs. That would go a long way toward protecting amici States from the church-state entanglement they seek to avoid.

CONCLUSION

For the foregoing reasons, the Court should grant the petition or summarily reverse the Massachusetts Supreme Judicial Court's decision.

Respectfully submitted,

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