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 OF *AMICI CURIAE* ASSOCIATION OF CLASSICAL CHRISTIAN SCHOOLS, VARIOUS MEMBER SCHOOLS, AND NEW SAINT ANDREWS COLLEGE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are the Association of Classical and Christian Schools, several of its member schools, and New Saint Andrews College, a classical Christian college in Moscow, Idaho. The association represents more than 400 classical Christian schools, typically K-12, although many have preschools. These schools practice classical education based on the seven liberal arts in a Christian setting and from a Christian worldview. Member *amici* include Veritas Academy in Lancaster County, Pennsylvania, Grace Christian Academy in Merrick, New York, Oak Hill Classical School in Dacula, Georgia, Paideia Academy in Knoxville, Tennessee, and Veritas Classical School in St. Augustine, Florida. *Amici* care deeply about the ministerial exception because the existence of a strong ministerial exception helps to safeguard the religious character and mission of the college as well as association's member schools. The college, the association, and its members are increasingly experiencing the conflict between the prevailing culture and the schools' teachings on human sexuality, marriage, and gender. A strong ministerial exception preserves their ability to hire teaching staff that will teach full-orbed biblical understanding of the world. A weak ministerial exception jeopardizes the unique religious contributions of these

[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than *amici curiae* or their counsel contributed money intended to fund preparation or submission of this brief. Counsel for all parties received timely notice of the intent to file and have consented in writing to the filing of this brief.

institutions. *Amici*'s experience will aid this Court's understanding of what is at stake.

SUMMARY OF THE ARGUMENT

Respondent DeWeese-Boyd filed an employment discrimination action against Petitioner Gordon College after the College denied her request for promotion to full professor of social work. The parties disagree about the school's reasons for its decision. The College articulates a rationale related to her scholarship. But DeWeese-Boyd alleges the College "unlawfully retaliated against her for her vocal opposition to Gordon's policies and practices regarding individuals who identify as lesbian, gay, bisexual, transgender, or queer (or questioning)" and because of her gender. *DeWeese-Boyd v. Gordon College*, 163 N.E.3d 1000, 1003 (Mass. 2021).

In its defense, Gordon College argues that the professorship is a ministerial position subject to the protections of the ministerial exception. The Massachusetts high court, however, feared "expansion of the ministerial exception" because supposedly "its eclipsing and elimination of civil law protection against discrimination would be enormous." *DeWeese-Boyd*, 163 N.E.3d at 1017. That fear arises from the observation that religious organizations commonly require "[t]he integration of religious faith and belief with daily life and work," *Id*.—the very liberty guarded by the Free Exercise Clause.

This case follows a growing trend of challenges to religious practices using anti-discrimination laws

aimed at sexual orientation and gender identity. That trend is unremarkable considering this Court's opinions in *Obergefell* and *Bostock* as well as a lack of clarity from this Court as to how maintain the religious guarantees of the First Amendment in light of expanded LGBT protections. This Court should grant the Petition to clarify the breadth of the ministerial exception, especially in light of the Supreme Judicial Court of Massachusetts decision to limit the breadth of the doctrine. Unless the Court steps in to provide meaningful First Amendment protection, states will continue to strike the wrong balance and prevent even faith-based nonprofits from hiring those who share their religious beliefs—even those views about marriage and sexuality that this Court declared "decent and honorable." *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015). Religious faith is not an isolated compartment of life, but a broad worldview that intersects every square inch in the lives of adherents and the organizations they operate. The promise of liberty requires broad religious protections, including the ministerial protection, in order to protect religious believers and their institutions at a time that we are broadening protections for those seeking to live their lives based on their LGBT beliefs. All Americans benefit when we protect the ability to order our lives around those principles most important to us without fear of backlash.

ARGUMENT

I. Ministerial Employees are the "Lifeblood" of a Religious Organization Because They are Critical to the Organization's Ability to Pursue its Mission and Disseminate its Message.

The ministerial exception enables a religious organization to preserve its core identity and perpetuate its existence by freely choosing those who will speak for it and carry out its mission. Associational autonomy is critical to this task. Ira C. Lupu, *Free Exercise Exemption and Religious Institutions: The Case of Employment Discrimination*, 67 B.U. L. REV. 391, 436 (1987). As the Fifth Circuit explained, ministerial employees are the "lifeblood" of a religious organization, the "chief instrument by which the [organization] seeks to fulfill its purpose." *McClure v. Salvation Army*, 460 F.2d 553, 558-559 (5th Cir. 1972). An employee's function and primary duties reveal whether that person is part of the "lifeblood" that flows through an institution's veins as it pursues its mission and disseminates its message. Teachers are the quintessential "lifeblood" of a religious school. Gordon College requires its professors to "integrate [their] Christian faith into [their] teaching and scholarship," thereby serving a community of persons who embrace "[t]he historic, evangelical, biblical faith." *DeWeese-Boyd*, 163 N.E.3d at 1002. Social work is a discipline that undeniably intersects faith, as illustrated by this Court's opinion in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (foster care placements).

A. The Ministerial Exception Safeguards a *Trilogy* of Core First Amendment Rights — Speech, Association, and Religion.

Speech, association, and religion are all "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," so that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg,* 521 U.S. 702, 721 (1997). These intertwined rights would be fundamental even if not explicitly stated in the First Amendment.

Without the robust protection long recognized by this Court, Petitioner would have to forfeit all three rights. The Supreme Judicial Court of Massachusetts admitted the ministerial exception is "necessary to protect our religious institutions against interference by civil authorities in the selection of those who minister to their faithful." *DeWeese-Boyd*, 163 N.E.3d at 1002. These basic liberties "are protected not only against heavy-handed frontal attack, but also from being stifled by *more subtle governmental interference*." *Healy v. James*, 408 U.S. 169, 183 (1972), quoting *Bates v. City of Little Rock,* 361 U.S. 516, 523 (1960) (emphasis added). Here, DeWeese-Boyd wields anti-discrimination law as a sword to attack her religious employer's doctrinal requirements. The state court's distortion of this Court's longstanding protection for religious hiring thwarts the College's ability to form a cohesive association with persons who will faithfully transmit its message.

B. Every Religious Association is Entitled to Define its *Mission* and Select Representatives to Disseminate its *Message*.

The themes of *mission* and *message* emerge before and after *Hosanna-Tabor* in this Court's expressive association jurisprudence. "The right to freedom of association is a right enjoyed by religious and secular groups alike." *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 189 (2012). Any expressive association may create a voice that will faithfully communicate its message and carry out its mission. Whether religious or secular, "[f]orcing a group to accept certain members may impair [its ability] to express those views, and only those views, that it intends to express." *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000).

An association of individuals can only speak through its authorized representatives. An expressive association is "the creation of a voice, and the selection of members is the definition of that voice." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 643 (1984) (O'Connor, J., concurring). Speech is amplified when many voices combine. Government restrictions on expressive association can have a chilling effect on protected speech. *Rumsfeld v. Forum for Academic & Inst. Rights*, 547 U.S. 47, 68 (2006); *Jaycees,* 468 U.S. at 622. Employees speak for an organization through both conduct and spoken words. If they are not committed to the association's purposes, they are likely to be disloyal, misrepresent the group, and eventually alter the organization's character.

Religious organizations 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." *Hosanna-Tabor*, 565 U.S. at 200-201 (Alito, J., concurring). Religious organizations are "dedicated to the collective expression and propagation of shared religious ideals." *Id.* at 200. The free exercise of religion requires that an organization "must retain the corollary right to select its voice." *Petruska v. Gannon University*, 462 F.3d 294, 306 (3d Cir. 2006). The continued existence and identity of a religious association hinges on the persons "select[ed] to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large." *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985). This is true for churches, schools, and other religious associations.

Religious schools exist for the "religious education and formation of students," and accordingly, "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 of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) ("*OLG*"). This selection process is a critical component of a religious organization's "autonomy with respect to internal management." *Id.* at 2060. A school's ability to select its teachers is imperative to preserving its identity. Teachers shape the content and quality of the school's speech. If they are not committed to the school's religious values, the group's voice will be garbled. *Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839, 857 (2d Cir. 1996).

The freedom to associate presupposes the freedom to *not* associate. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000). An organization's ability to speak is severely curtailed if it is denied the right to identify the persons who speak for it. This limited right to "discriminate" enables an expressive association to create its distinctive voice, and that encompasses the corollary right to determine who does *not* represent and speak for it.

Gordon College, like any organization committed to the transmission of a system of values, is engaged in constitutionally protected expression. *Dale*, 530 U.S. at 650. That expression is threatened if the school is compelled to accept a teacher whose presence may imperil its ability to promote a particular viewpoint. *Id*. at 648; *New York State Club Assn., Inc. v. City of New York,* 487 U.S. 1, 13 (1988). The presence of an unwanted teacher would encroach on the school's ability to advocate its religious values. Without the ministerial exception covering its teachers, the College would have no comparable alternative channels to mold and preserve the message it was formed to express and pass on to the next generation.

C. A Religious School Speaks a *Message* Inextricably Linked to its *Mission*. The School Must Retain the Exclusive Right to Select the Messenger.

Communication is critical to any association's ability to fulfill its mission. Religious speech, "far

from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression . . . government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). *See also Lamb's Chapel v. Center Moriches Union Free School Dist.,* 508 U.S. 384 (1993); *Bd. of Ed. of Westside Community Schools (Dist. 66) v. Mergens,* 496 U.S. 226 (1990); *Widmar v. Vincent,* 454 U.S. 263 (1981); *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640 (1981). Regardless of motives, the state "may not substitute its judgment as to how best to speak" for that of an organization. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 791 (1988); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018) (crisis pregnancy centers protected against compelled speech regarding state-financed abortions). Compelling an organization to retain an unwanted ministerial employee (or pay a hefty fine) is tantamount to compelled speech. *See, e.g., Wooley v. Maynard*, 430 U.S. 705, 717 (1977); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995). Even a secular business may create a unique brand, free of government compulsion, to convey a message to the public. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1760 (2017) (trademark); *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001) (mushroom producer).

The free speech principles at stake here were evident in *Hosanna-Tabor*. The plaintiff teacher had a role in "conveying the Church's message and

carrying out its mission." 565 U.S. at 192; *id.* at 204 (Alito, J., concurring). In *OLG*, similarly, the teachers were "entrusted most directly with the responsibility of educating their students in the faith." 140 S. Ct. at 1066. The ministerial exception "should be tailored to this purpose" and applied to any employee who "serves as a messenger or teacher of its faith." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring). Considering the critical role of those who speak for a religious association, "[t]he Constitution 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. Here, DeWeese-Boyd is a messenger of the College's religious doctrine, speaking for the school by integrating its religious worldview into her teaching about social work.

D. A Religious Association Conveys its Message Not Only Through Speech, But Also the *Conduct* of its Representatives.

Religion is a comprehensive worldview, not a compartment detached from daily life. Religious school representatives not only speak *about* religion—they model its values in their interactions with students, faculty, and others. A religious school must consider the students it serves and respond to their expectations and needs. In *OLG*, as in *Hosanna-Tabor*, this Court recognized that "educating young people in their faith, inculcating its teachings, and *training them to live their faith* . . . lie at the *very core* of the mission of a private religious school." 140 S. Ct. at 2064 (emphasis added). Indeed, this is "what an

employee does." *Id*. At Gordon College, faculty members must not only "affirm Gordon's Statement of Faith"—they must also "agree to abide by the behavioral standards in Gordon's Statement on Life and Conduct." *DeWeese-Boyd*, 163 N.E.3d at 1004.

A religious organization may require conformity to its moral standards as a condition of membership. *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872). Criteria for leaders, who speak for the organization, is even more critical and may not be dictated by government. "When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters. . . . [B]oth the content and credibility of a religion's message depend vitally on the character and conduct of its teachers. . . ." *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring). Teachers not only convey the school's religious message—they are "the embodiment" of that message. *Petruska,* 462 F.3d at 306.

E. Every Association — Religious or Not — is Entitled to Select Those Who Will Disseminate its Unique Message and Fulfill its Mission.

A broad view of this Court's expressive association jurisprudence is critical to this case. "The right to freedom of association is a right enjoyed by religious and secular groups alike." *Hosanna-Tabor*, 565 U.S. at 189. Every expressive association is entitled to craft a voice that will faithfully communicate its message and carry out its mission.

"[A]n entity can act and speak only through the individuals that comprise and represent it." *Wilson v. Cable News Network, Inc.*, 444 P.3d 706, 720 (Cal. 2019). Speech is often most effective when many voices are combined. Employees speak for an organization through their conduct and spoken words. If they are not committed to the association's purposes, they are likely to be disloyal or misrepresent the group. Over time, the association's fundamental identity may be distorted beyond recognition.

The Supreme Judicial Court of Massachusetts' decision against Gordon College not only impacts other religious organizations—it also stifles the freedom of non-religious groups to associate and disseminate a clear message through their chosen representatives. There is no substitute for a group's right to select its members and leaders. *Cal. Democratic Party*, 530 U.S. at 581. Regulating the identity of a political party's leaders interferes with the content and promotion of its message. *Id.* at 579. Similarly, associational autonomy is critical to a religious organization's preserving its identity. Ira C. Lupu, *Free Exercise Exemption and Religious Institutions: The Case of Employment Discrimination*, 67 B.U. L. REV. 391, 436 (1987). A religious institution may not be forced to say "anything in conflict with [its] religious tenets." *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961). Government regulation has the potential to "alter both content and the mode of expression of its shared commitments over time." Lupu, *Free Exercise Exemption*, 67 B.U. L. REV. at 434.

The freedom to associate presupposes the freedom to *not* associate. *Cal. Democratic Party,* 530 U.S. at 574. The ability of an organization to speak is severely curtailed if the group is denied the right to identify the messenger who speak for it. This limited right to "discriminate" enables an expressive association to create its unique voice, and that encompasses the corollary right to determine who does *not* represent and speak for it. This case exemplifies that right. Gordon College has the right to decline to hire an individual who disagrees with its religious message.

II. Operating a Religious Organization in Accordance with that Organization's Religious Doctrine is Not Invidious, Irrational, or Arbitrary Discrimination.

The Massachusetts court observed that if DeWeese-Boyd's allegations were true and "the ministerial exception applies . . . the religious institution will be free to discriminate on those bases." *Id*. at 1009. The court admitted that religious groups have an interest in "choosing who will preach their beliefs, teach their faith, and carry out their mission" but quickly underscored society's interest in "the enforcement of employment discrimination statutes." *DeWeese-Boyd*, 163 N.E.3d at 1009, citing *Hosanna*, 565 U.S. at 196, *Bostock* v. *Clayton County, Ga.*, 140 S. Ct. 1731, 1737 (2020). In addition to the problems with placing a *statutory* right on equal footing with a *constitutional* right, the school's actions, as alleged, do not constitute invidious discrimination but only those differences of opinion on

important issues that members of a free society may reasonably disagree on.

Unlike the age and disability discrimination issues in *OLG* and *Hosanna*, DeWeese-Boyd alleges "unlawful discrimination on the basis of her association with LGBTQ+ persons," *id*. at 1003, an issue addressed by the College's religious beliefs about sexual morality. The action of a *religious* organization, motivated by its *religious* doctrine, is not arbitrary, irrational, unreasonable, or invidious. Indeed, the College's selection of employees who support its religious mission is not "discrimination" at all. *See Obergefell*, 576 U.S. at 679-80 ("The First Amendment ensures that religious organizations . . . are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered."). This is not a case where the law may proscribe refusal to conduct business with an entire group based on personal animosity or *irrelevant* criteria. It is *relevant* for a religious school to consider a teacher's agreement (or disagreement) with its religious doctrine and mission. A court's refusal to consider religious motivation and relevance—and distinguish that from invidious discrimination—"tends to exhibit hostility, not neutrality, towards religion." *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 142 (1987); *see also Thomas v. Review Bd. of Ind. Emp't*, 450 U.S. 707, 708 (1981).

Religious employers' pursuit of employees that share their mission is not invidious but indispensable to maintaining the character of an organization. A

religious employer should be free to hire those who both a) believe what the organization believes and who b) seek to live consistent with those beliefs. Human sexuality is inseparable from most religious doctrinal belief systems and expectations as to conduct within those belief systems. While any employee will have certain sexual desires, most religious employers expect their employees to agree with their belief system on these issues and act according to their belief systems. For instance, most religious organizations will teach that even consensual sex with a non-spouse is immoral even though they know employees may have sexual desire for people who are not their spouse. The religious organization knows people have desires to do things they teach are wrong, but they seek to hire people who a) believe what the organization does about those desires and b) seek to live consistent with those beliefs. Recognition of a broad ministerial exception is essential to religious freedom, freedom of speech, and association. Without it, religious groups cannot adhere to these teachings that are core to their understanding of the Bible.

A. This Case is the Natural Product of this Court's Decisions in *Obergefell* and *Bostock*.

DeWeese-Boyd's allegations of unlawful discrimination are rooted in her opposition to the College's religious doctrine about sexuality. There is an alarming surge in the use of anti-discrimination laws to compel uniformity of thought and action about sexual mores, contrary to *Obergefell*'s admonition that religious organizations and persons should be

free to organize their lives around these issues. This is hardly a shocking development. Indeed, it is the foreseeable result of this Court's rulings in *Obergefell*, 576 U.S. 644, and *Bostock*, 140 S. Ct. 1731. These opinions correspond to the cultural acceptance of lifestyles that clash with the moral codes of many faith traditions. The Court put its thumb on the scale on issues of profound cultural and religious significance but was unable to lift a finger to relieve the burdens it had just created. *Obergefell*, 576 U.S. at 711 (Roberts, C.J., dissenting) ("[f]ederal courts . . . do not have the flexibility of legislatures to address concerns of parties not before the court"). Justice Thomas warned of "potentially ruinous consequences for religious liberty." *Id.* at 734 (Thomas, J., dissenting). The Court's lofty promises to preserve religious liberty, *id.* at 679-680, now ring hollow. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), provided narrow protection against open government hostility to religion. But a much broader ruling is needed to guard the liberty of religious organizations to preserve their identity and pursue their mission while remaining faithful to their core beliefs.

Obergefell and *Bostock* have led to brazen efforts to coerce uniformity of thought about the nature of marriage and sexuality, redefining basic biology and concepts that have stood for millennia. Attempts to compel uniform thought are dangerous to a free society where the government must respect a wide range of diverse viewpoints. In the past, "[s]truggles to coerce uniformity . . . have been waged by many good as well as by evil men." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943). These

efforts are ultimately futile. "Compulsory unification of opinion achieves only the unanimity of the graveyard." *Id*. at 641. Religious organizations and individuals are especially threatened by laws and policies that prohibit "discrimination" based on sexual orientation and/or gender identity. Strong convictions about marriage and sexuality often characterize a system of religious doctrine. Gordon College holds religious beliefs about marriage and sexuality that are baked into the religious worldview that undergirds its mission, message, and choice of messengers. The Constitution guarantees Gordon College and other religious organizations "independence from secular control or manipulation" in matters of "faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am*., 344 U.S. 94, 116 (1951). Massachusetts crushes that independence, and its assault on religious freedom will inevitably create additional collateral damage unless this Court steps in.

B. The Expansion of Anti-Discrimination Principles Has Accelerated the Potential for Collision with First Amendment Rights.

Anti-discrimination policies have ancient roots. "State public accommodations laws were originally enacted to prevent discrimination in traditional places of public accommodation—like inns and trains." *Dale*, 530 U.S. at 656. The Massachusetts law at issue in *Hurley* grew out of the common law principle that innkeepers and others in public service

could not refuse service to a customer without good reason. *Hurley*, 515 U.S. at 571.

Modern anti-discrimination principles expanded over the years. The traditional "places" have moved beyond inns and trains to commercial entities and even membership associations, increasing the potential collision with First Amendment rights. *Dale*, 530 U.S. at 656. Anti-discrimination rights, whether created by statute or derived from equal protection principles, may conflict with core rights to religious liberty. Harlan Loeb and David Rosenberg, *Fundamental Rights in Conflict: The Price of a Maturing Democracy*, 77 N.D. L. REV. 27, 29 (2001). Commentators have observed the complex legal questions that arise where statutory protections clash with the free exercise of religion. Jack S. Vaitayanonta, Note: *In State Legislatures We Trust? The "Compelling Interest" Presumption and Religious Free Exercise Challenges to State Civil Rights Laws*, 101 COLUM. L. REV. 886, 887 (2001); *see also* David E. Bernstein, *Defending the First Amendment From Antidiscrimination*, 82 N.C. L. REV. 223 (2003) (urging resolution in favor of First Amendment liberties).

The clash between anti-discrimination principles and the First Amendment is particularly volatile when a morally controversial practice is protected and religious persons or groups are swept within the ambit of the law. Government has no right to legislate a particular view of sexual morality and compel religious institutions and individuals to facilitate it. When the D.C. Circuit addressed the question "of imposing official orthodoxy on controversial issues of

religious, moral, ethical and philosophical importance, upon an entity whose role is to inquire into such matters" it concluded that "[t]he First Amendment not only ensures that questions on difficult social topics will be asked, it also *forbids government from dictating the answers*." *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.,* 536 A.2d 1, 24 (D.C. 1987) (emphasis added). Religious voices have shaped views of sexual morality for centuries. These deeply personal convictions shape the way people of faith live their daily lives, privately and in public. Advocates of social change with respect to sexuality tend to be "anything but indifferent toward the teachings of traditional religion—and since they are not indifferent they are not tolerant." Michael W. McConnell, *"God is Dead and We have Killed Him!" Freedom of Religion in the Post-Modern Age*, 1993 BYU L. REV. 163, 187 (1993). Political power can be used to squeeze religious views out of public debate about controversial social issues, as cases like this one demonstrate.

C. **The Ministerial Exception Complements the Broad Coreligionist Doctrine, Based on Case Precedent and the Title VII Statutory Exemption from Religious Discrimination**.

There is unquestionably tension between "our cardinal Constitutional principles of freedom of religion . . . and our national attempt to eradicate all forms of discrimination." *Rayburn*, 772 F.2d at 1167. But a religious organization must be free to exclude non-adherents from employment positions where

they could distort the organization's message or hinder its mission. Otherwise, an association could be hijacked by non-adherents who would distort its identity and message.

Recognizing the unique constitutional protection for religion, the Civil Rights Act of 1964 (Title VII) accommodates religious employers by exempting them from the prohibition against religious discrimination. 42 U.S.C. § 2000e-1. This Court upheld the exemption against Establishment and Equal Protection Clause challenges, observing that government should not interfere with "the ability of religious organizations to define and carry out their religious missions." *Corporation of the Presiding Bishop v. Amos,* 483 U.S. 327, 335-336 (1987) (building engineer discharged by nonprofit gymnasium associated with church). This broad exemption allows a religious employer to terminate an employee "for exclusively religious reasons," even "*without respect to the nature of their duties*." *Spencer v. World Vision, Inc*., 619 F.3d 1109, 1111 (9th Cir. 2010) (emphasis added). In *Spencer*, the Ninth Circuit upheld World Vision's termination of three employees who performed maintenance, office, and shipping services. All of them initially signed the required "Statement of Faith, Core Values, and Mission Statement" but later were terminated when they renounced the religious doctrine that defines World Vision's mission. *Id*. at 1112.

The constitutionally compelled ministerial exception, based on an *employee's* ministerial status, complements the broad protection grounded in an *employer's* religious nature. Both guard free exercise

rights. If otherwise applicable antidiscrimination laws were applied to religious entities without some adjustment for their religious character and purposes, there would be an enormous collision with religious liberty, free speech, and association. Religious entities have broad liberty to "discriminate" based on religious doctrine. Although other anti-discrimination provisions may sometimes apply, the ministerial exception ensures that government does not encroach on a religious organization's liberty to select those employees who are most critical to fulfilling its *religious* mission.

CONCLUSION

This Court should grant the Petition and reverse the decision of the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

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