IN THE SUPREME COURT OF THE UNITED STATES

Nos. 19-267 & 19-348

OUR LADY OF GUADALUPE SCHOOL, PETITIONER,

v.

AGNES MORRISSEY-BERRU.

ST. JAMES SCHOOL, PETITIONER,

v.

DARRYL BIEL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KRISTEN BIEL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNOPPOSED MOTION OF THE COMMONWEALTH OF VIRGINIA FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Commonwealth of Virginia, on behalf of 16 States and the District of Columbia (collectively, amici States), respectfully requests that the Court grant divided argument and allow amici States ten minutes of argument time in support of respondents. Respondents have agreed to

cede ten minutes of argument time to Virginia and therefore consent to this motion.

1. These cases will directly affect the constitutionality of numerous state laws. Although respondents' claims arise under federal law—specifically, the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* —the "ministerial exception" under which petitioners seek protection derives from the Religion Clauses of the Federal Constitution and is thus binding on the States. See *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 565 U.S. 171, 176 (2012) (framing issue as "whether the Establishment and Free Exercise Clauses of the First Amendment bar" certain suits alleging "employment discrimination"); *id.* at 194 n.3 (accepting plaintiffs' concession "that if the ministerial exception bars her retaliation claim under [federal law], it also bars her retaliation claim under Michigan law"). Because the principles articulated in these cases will apply equally to state worker-protection laws and will not be subject to modification or reconsideration by States or their legislatures, amici States have a particular interest in ensuring that their sovereign

powers are not unduly restrained. See *Knick* v. *Township of Scott*, 139 S. Ct. 2162, 2177 (2019) (noting that when this Court announces a constitutional rule, "only this Court or a constitutional amendment can alter" it).

2. These cases also implicate amici States' distinct interest in protecting their residents "from the harmful effects of discrimination." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 609 (1982). Respondents ably represent the private interest in recovery for individual plaintiffs who have been subjected to unlawful discrimination. But, as this Court has emphasized, compensation is only "one object" of anti-discrimination statutes. *McKennon* v. *Nashville Banner Pub. Co.*, 513 U.S. 352, 358 (1995). Such statutes "also serve an obvious public function in deterring future violations," *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279, 295 (2002), and thus "eliminat[ing] discrimination in the workplace," *McKennon*, 513 U.S. at 358 (internal quotation marks and citation omitted). As the Court has recognized, States play a vital and unique role in that process, both by enacting and enforcing their own laws and working in partnership with the federal government to enforce federal law. See, *e.g.*, *EEOC* v. *Commercial*

Office Prods. Co., 486 U.S. 107, 110–111 (1988). The States' sovereign interest in appropriately rigorous enforcement of anti-discrimination laws thus stands separate and apart from the private recoveries respondents seek.

3. Permitting argument by amici States in support of respondents would be particularly warranted if the Court grants leave for the federal government to argue as amicus curiae in support of petitioners. Although the federal government filed a brief and presented argument supporting one of the respondents in the court below, it now joins petitioners in urging reversal of that court's decision and arguing for a significant expansion of the ministerial exception. Moreover, in its motion for divided argument, the federal government focuses on its interest in preserving religious freedom while downplaying its interest in enforcing federal civil rights laws and protecting employees (like respondents) from the harmful effects of discrimination. See U.S. Mot. 2. Permitting argument by amici States in support of respondents will thus aid the Court's resolution of these cases by providing the perspective of different types of sovereigns with different views about

how the Court should balance the critical issues of religious liberty and workplace equality.

Respectfully submitted.

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