No. 19-348

IN THE

Supreme Court of the United States

ST. JAMES SCHOOL,

Petitioner,

v.

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

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND JEWISH COALITION FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The General Conference of Seventh-day Adventists is the national administrative body for the Seventh-day Adventist Church, a Protestant Christian denomination with more than 20 million members. In the United States, the Church has more than 1.2 million members. The Church operates the largest Protestant school system in the world, with nearly 7,600 schools, over 80,000 teachers, and 1,545,000 students. The Church relies on Seventh-day Adventist educators to fulfill its mission of providing biblical preaching, teaching, and healing ministries.

The Jewish Coalition for Religious Liberty (JCRL) is a nondenominational organization of Jewish communal and lay leaders, seeking to protect the ability of all Americans to freely practice their faith. JCRL also aims to foster cooperation between Jewish and other faith communities in an American public square in which all supporters of freedom are free to flourish. JCRL is devoted to ensuring that First Amendment jurisprudence enables the flourishing of religious viewpoints and practices in the United States, including for communities of traditional faith.

Amici have an acute interest in ensuring that religious organizations remain free to select those teachers and other employees in religious educational systems that "teach their faith" and "carry out their mission." *Hosanna-Tabor Evangelical Lutheran Church*

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[1] Counsel of record for all parties have been notified of *amici*'s intent to file this brief and have consented to its filing. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici*, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

& Sch. v. *EEOC*, 565 U.S. 171, 196 (2012). The autonomy of religious groups to govern themselves in such matters is a matter of fundamental religious liberty and is crucial to the ability of religious schools to carry out their missions. This autonomy is particularly important for minority religions like *amici*, for whom religious education is a critical means of propagating the faith, instructing the rising generation, and instilling a sense of religious identity.

Amici urge the Court to grant the petition.[2] The Ninth Circuit is the only circuit that has adopted such a cramped understanding of the ministerial exception that minimizes the role of religious educators. The holding in this case, if allowed to stand, will impair the missions of *amici* and other religious groups for whom religious education is central to their faith.

SUMMARY OF ARGUMENT

The Ninth Circuit adopted an unduly narrow understanding of the ministerial exception. The decision below refused to apply the exception to a teacher at a Roman Catholic school who was responsible for teaching religion classes four days a week, leading students in twice-daily prayers, accompanying students to monthly Catholic Mass, displaying religious symbols in the classroom, and incorporating Catholic faith and values into the curriculum. The lower court's holding misconstrues this Court's decision in *Hosanna-Tabor*, sets the Ninth Circuit at odds with other circuits and state courts that have applied the

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[2] *Amici* filed a similar brief in support of certiorari in a parallel case currently pending before the Court. See Brief of *Amici Curiae* General Conference of Seventh-day Adventists and Jewish Coalition for Religious Liberty in Support of Petitioner, *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, No. 19-267 (Sept. 30, 2019).

ministerial exception to religious educators, and undermines the religious freedom guaranteed by the First Amendment.

The ministerial exception guarantees religious groups the right to select who will "preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor*, 565 U.S. at 196. At its core, this right includes the liberty to choose who will "transmi[t] the … faith to the next generation." *Id.* at 192. For many religious groups, religious education is a critical means of communicating the faith. "When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters." *Id.* at 201 (Alito, J., concurring). *Amici* agree that "both the content and credibility of a religion's message depend vitally on the character and conduct of its teachers," and that the selection of religious teachers "is an essential component of [a religious body's] freedom to speak in its own voice." *Id.* For these reasons, this Court has long recognized that the 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 (Alito, J., concurring).

The court of appeals disagreed, finding that a rule "under which any school employee who teaches religion would fall within the ministerial exception" would be inconsistent with *Hosanna-Tabor* because it would "render most of the analysis in *Hosanna-Tabor* irrelevant." Pet. App. 15a. It construed *Hosanna-Tabor* to require not only an important role in "transmitting religious ideas," but also additional factors such as a leadership position in the church, extensive religious training, or a sufficiently religious-sounding title. *Id.* at 8a–13a, 15a.

This was a misreading of *Hosanna-Tabor*. The Court in *Hosanna-Tabor* explicitly declined to hold that the ministerial exception requires additional factors beyond performing "a role in conveying the Church's message and carrying out its mission." 565 U.S. at 192. To be sure, the Court cited several factors supporting its conclusion that Cheryl Perich, a "called teacher" of the Lutheran faith, was covered by the ministerial exception. *Id.* at 193–94. But the Court "express[ed] no view on whether someone with Perich's duties would be covered by the ministerial exception in the absence of the other considerations [the Court] discussed." *Id.* at 193. The decision below nonetheless mistakenly asks "how much like Perich a given plaintiff is, rather than whether the employee served a religious function." *Sterlinski* v. *Catholic Bishop of Chi.*, 934 F.3d 568, 570 (7th Cir. 2019).

The court of appeals also erred in concluding that applying the ministerial exception to religious teachers is "not needed to advance the Religion Clauses' purpose." Pet. App. 15a. To the contrary, the freedom to choose religious teachers and leaders is central to both the Free Exercise and anti-Establishment rights enshrined in the First Amendment. From the Founding through the present, the Religion Clauses have protected religious groups' internal affairs from state interference. The church—not the government—is sovereign when it comes to selecting those who will teach, lead, and carry out its mission. When the government oversteps this limitation, it violates the freedom of the church and entangles the state in religious questions. Under the Ninth Circuit's rule, the judiciary has to arbitrate the sincerity and legitimacy of religious groups' decisions about who is qualified to teach and personify their faith.

Nine judges acknowledged the serious flaws in the decision below in their dissent from denial of rehearing en banc. Pet. App. 40a–67a. They recognized "[t]he harmful effects" caused by this "narrowest construction" of the ministerial exception, which "splits from the consensus of [the court's] sister circuits." *Id.* at 42a, 66a (R. Nelson, J., dissenting from the denial of rehearing en banc). *Amici* respectfully urge the Court to grant certiorari to resolve this split and affirm the "functional consensus" adopted by all other federal circuits and state courts of last resort to consider the issue post-*Hosanna-Tabor*. 565 U.S. at 203 (Alito, J., concurring).

I. THE FIRST AMENDMENT GRANTS RELIGIOUS GROUPS THE RIGHT TO CHOOSE, WITHOUT GOVERNMENTAL INTERFERENCE, WHO WILL TEACH THEIR FAITH.

This Court has long held that the judiciary may not question a religious group's determination of "questions of discipline, or of faith, or ecclesiastical rule." *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1872). This rule is deeply rooted in the Free Exercise Clause, which guarantees religious groups autonomy "to decide for themselves, free from state interference, matters of church 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 Establishment Clause likewise prohibits governmental interference "in essentially religious controversies." *Serbian E. Orthodox Diocese for the U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 709 (1976). In this way, the Religion Clauses work together to "protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring).

Applying these principles, *Hosanna-Tabor* ratified the longstanding consensus of the lower courts that "[b]oth Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers." *Id.* at 181. The Court explained, "[r]equiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so," violates the Free Exercise Clause because that mandate "interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs." *Id.* at 188. Giving "the state the power to determine which individuals will minister to the faithful" also violates the Establishment Clause. *Id.* at 188–89. In short, "[t]he Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." *Id.* at 184.

A. Religious teachers play a vital role in transmitting the faith to the rising generation.

The ministerial exception performs an especially critical function: It allows religious groups to choose who will be entrusted with the "important role [of] transmitting the … faith to the next generation." *Id.* at 192. For many religions, the work of transmitting the faith occurs largely within their religiously affiliated schools. This Court has "recognized the critical and unique role of the teacher in fulfilling the mission of a church-operated school." *NLRB* v. *Catholic Bishop of Chi.*, 440 U.S. 490, 501 (1979). After all, "both 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). The Ninth Circuit's decision allows the state to decide who will teach the faith to a de-

nomination's students. This holding, if allowed to stand, would radically undermine each religious group's right under the Free Exercises Clause "to shape its own faith and mission through its appointments," and would violate the Establishment Clause by filtering religious instruction through the hands of a government-approved educator. *Id.* at 188–89.

Teachers at religiously affiliated schools play an important "role in conveying the Church's message and carrying out its mission." *Id.* at 192. Most obviously, their duties often include religious instruction and observance. Less visibly, but equally as important, they are responsible for promoting the spiritual and moral formation of their students in accordance with the tenets of the faith. This responsibility pervades every minute of the school day. Teachers model faithful conduct, mete out discipline in accordance with the religious principles, encourage faith and spiritual growth, and teach "secular" subjects within a larger religious perspective. See *Lemon* v. *Kurtzman*, 403 U.S. 602, 618 (1971) ("Religious formation is not confined to formal courses … [or] a single subject area.").

The role of teachers in this regard is of particular importance to *amici* and other religious traditions for whom education is inextricable from their faiths. For example, Seventh-day Adventists trace the importance of education back to the Garden of Eden. See Ellen G. White, *Education* 20 (1903) ("The system of education instituted at the beginning of the world was to be a model for man throughout all aftertime …. The Garden of Eden was the schoolroom, nature was the lesson book, the Creator Himself was the instructor, and the parents of the human family were the students."). Education for Seventh-day Adventists has therefore always been explicitly reli-

gious, aimed at "restor[ing] human beings into the image of God as revealed by the Life of Jesus Christ" and focused on the development of "knowledge, skills, and understandings to serve God and humanity."[3] A faith-based education is in fact so important to Seventh-day Adventists that they start at an early age through a program called Early Childhood Education and Care, which offers the "education of God's precious little ones" in "safe, nurturing environments that are aligned with the beliefs and values of the Seventh-day Adventist Church."[4]

To fulfill this mission, the Seventh-day Adventist Church strives to run its schools in ways that honor God, by uniting doctrinal, moral, and secular teaching within a comprehensive Christian worldview. See *Clapper* v. *Chesapeake Conference of Seventh-day Adventists*, 166 F.3d 1208, at *1 (4th Cir. 1998) (per curiam) (table) (Adventists operate their schools "for the purpose of transmitting to their children their own ideals, beliefs, attitudes, values, habits and customs" and because they "want their children to be loyal, conscientious Christians"). This approach has proven invaluable to strengthening the students' relationship with Christ and passing the faith to the next generation. In fact, the Church commissioned three studies of every student in its U.S. schools (called the Valuegenesis studies), which illuminate the role and effectiveness of Seventh-day Adventist schools in fostering faith. See V. Bailey Gillespie et al., *Valuegenesis Ten Years Later: A Study of Two Generations*

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[3] Seventh-day Adventist Church, *About Us*, http://adventisteducation.org/abt.html (last visited Oct. 15, 2019).

[4] Seventh-day Adventist Church, *Early Childhood Education & Care*, http://adventisteducation.org/ecec.html (last visited Oct. 15, 2019).

(2004). Nearly three-fourths of students responded that attending a Seventh-day Adventist school helped develop their faith either "very much" (36%) or "somewhat" (38%). *Id.* at 302. Significantly, 53% of students attributed positive development of their faith to their teacher's faith; 70% stated that prayer at school positively impacted their faith's development; and 63% recognized that Bible classes developed their faith. *Id.* These data confirm the critical role that religious education—and religious teachers—play in transmitting the faith.

The same principle is true in the Jewish tradition. Jews believe that they are under a biblical obligation to teach their children God's commandments. *Deuteronomy* 6:7 (King James) ("And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up."). This obligation can be delegated to a school. Maimonides, Mishne Torah, *Hilkhot Talmud Torah* 1:3 ("And one is obligated to hire a tutor for his son to instruct him ...."). Teachers at Jewish schools thus step into parents' shoes in fulfilling a biblical commandment.

Moreover, Jews view education as an essential link in the chain binding modern Jews to their ancestors who received the bible at Mount Sinai. As the Lubavitcher Rebbe, a major 20th century Jewish figure, explained, "When you establish an educational institution, the achievement goes on forever. ... Though a person moves on from this physical world, the educa-

tion that he received is passed on to the next generation, and from that generation to the next ...."[5]

Rabbi Jonathan Sacks, the former Chief Rabbi of the United Kingdom, maintained that Jewish day school education is essential to the continuity of Judaism and the Jewish people. Without it, he believed, assimilation might cause the Jewish people to nearly disappear. See Jonathan Sacks, *Will We Have Jewish Grandchildren?: Jewish Continuity and How to Achieve It* (1994). Empirical research conducted at Brandeis University has shown that Jewish day school attendance strongly correlates with higher rates of interest in remaining Jewish, involvement in Jewish activities, attendance at religious services, and valuing a marriage partner who will maintain a Jewish home. See Fern Chertok et al., *What Difference Does Day School Make? The Impact of Day School: A Comparative Analysis of Jewish College Students* (2007).

B. Courts before and after *Hosanna-Tabor* have recognized that the ministerial exception covers religious educators.

Given the importance of religious education to the propagation of faith—and the "critical and unique role of the teacher in fulfilling the mission of a church-operated school," *Catholic Bishop*, 440 U.S. at 501—courts have long recognized that the ministerial exception covers religious educators. For example, the Fourth Circuit considered a case involving a Seventh-day Adventist elementary school teacher. The court underscored the Adventists' infusion of theological beliefs into "secular" subjects, including the "teaching

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[5] Bobby Vogel, *The Importance of Education*, TheRebbe.org (2002), https://www.chabad.org/therebbe/article_cdo/aid/1395114/jewish/The-Importanceof-Education.htm.

of the Bible's story of creation in science classes and the teaching of the influence of religion on the events of history in social studies classes." *Clapper*, 166 F.3d at *2. Similarly, the Seventh Circuit decided a case involving a Hebrew instructor at a Jewish day school. The court highlighted that even in Hebrew language classes, the instructor "discussed Jewish values with her students, taught about prayers and Torah portions, and discussed Jewish holidays and symbolism." *Grussgott* v. *Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 656 (7th Cir.) (per curiam), *cert. denied*, 139 S. Ct. 456 (2018).[6]

These decisions do not hold that *every* employee of a religious school is covered by the ministerial exception. Some employees—such as janitors, cafeteria workers, and "purely secular" teachers—whose duties do not include religious instruction or other religious functions may not qualify. See *Hosanna-Tabor*, 565 U.S. at 204 (Alito, J., concurring). But teachers who are responsible for religious instruction—even if they are *also* responsible for teaching "secular" subjects—do qualify. See *id.* Such a teacher is "not simply a public school teacher with an added obligation to teach religion." *Coulee Catholic Schs.* v. *Labor & Indus. Review Comm'n*, 768 N.W.2d 868, 890 (Wis.

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[6] See also *Sterlinski* v. *Catholic Bishop of Chi.*, 934 F.3d 568 (7th Cir. 2019) (music director and organist); *Fratello* v. *Archdiocese of N.Y.*, 863 F.3d 190 (2d Cir. 2017) (school principal); *Cannata* v. *Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012) (music director); *EEOC* v. *Roman Catholic Diocese of Raleigh*, 213 F.3d 795 (4th Cir. 2000) (music director and elementary school teacher); *Curl* v. *Beltsville Adventist Sch.*, No. 15-3133, 2016 WL 4382686 (D. Md. Aug. 15, 2016) (music teacher); *Henry* v. *Red Hill Evangelical Lutheran Church of Tustin*, 134 Cal. Rptr. 3d 15 (Ct. App. 2011) (preschool teacher); *Coulee Catholic Schs.* v. *Labor & Indus. Review Comm'n*, 768 N.W.2d 868 (Wis. 2009) (elementary school teacher).

2009). Rather, she is "an important instrument in a faith-based organization's efforts to pass on its faith to the next generation." *Id.*

II. THE NINTH CIRCUIT'S CONTRARY DECISION MISCONSTRUES BOTH *HOSANNA-TABOR* AND THE PURPOSES OF THE RELIGION CLAUSES.

The Ninth Circuit concluded that a rule "under which any school employee who teaches religion would fall within the ministerial exception … would not be faithful to *Hosanna-Tabor* or its underlying constitutional and policy considerations." Pet. App. 15a. This conclusion misreads both *Hosanna-Tabor* and the Religion Clauses.

A. Recognizing that the ministerial exception covers all religious educators is fully consistent with *Hosanna-Tabor*.

Hosanna-Tabor did not purport to define the metes and bounds of the ministerial exception. Nor did it adopt any "test," whether multifactor or totality-of-the circumstances. Rather, the Court stressed that this was its "first case involving the ministerial exception," and that it was "enough" to hold that the exception covered Perich "given all the circumstances of her employment." 565 U.S. at 190. In other words, this Court concluded that *at least* where those circumstances exist, the ministerial exception applies.

This Court did not, however, hold or imply that each of the circumstances it discussed—having a formal religious title, holding oneself out as a minister, and performing important religious functions—was a prerequisite to invoke the ministerial exception. Nor did the opinion suggest that a teacher's performance of significant religious functions in the

course of her employment is insufficient, by itself, to trigger the exception. *Contra* Pet. App. 15a (concluding that would such a rule would "render most of the analysis in *Hosanna-Tabor* irrelevant"). On the contrary, this Court expressly rejected such a misreading, "express[ing] no view on whether someone with [the same] duties would be covered by the ministerial exception in the absence of the other considerations [the Court] discussed." 565 U.S. at 193.[7]

The Ninth Circuit's contrary conclusion improperly transforms this Court's explicit expression of "no view" on whether religious duties alone can trigger the exception into a binding holding that they cannot. This approach is deeply flawed because it ascribes importance to the characteristics of the individual plaintiff in *Hosanna-Tabor* (a Lutheran schoolteacher), even though religious educators and ministers from other faiths may not possess those same characteristics. See *Sterlinski*, 934 F.3d at 570 (criticizing the Ninth Circuit's approach because it "asks how much like Perich a given plaintiff is, rather than whether the employee served a religious function"); Pet. App. 50a, 53a (R. Nelson, J., dissenting from the denial of rehearing en banc) ("The panel majority mistakes *Hosanna-Tabor* to create a resemblance-to-Perich test," whereby religious organizations "must

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[7] The limited scope of the Court's holding is underscored by the fact that Justices Thomas, Alito, and Kagan all joined the Court's opinion in full even though the rules they proposed for determining who qualifies as a "minister" do not require a totality-of-the-circumstances analysis—and would plainly cover respondent. See *Hosanna-Tabor*, 565 U.S. at 196 (Thomas, J., concurring) (concluding that courts should "defer to a religious organization's good-faith understanding of who qualifies as its minister"); *id.* at 199 (Alito, J., concurring) (concluding that the ministerial exception "should apply to any 'employee' who … serves as a messenger or teacher of [the] faith").

show that its employee served a significant religious function *and* the presence of at least one additional 'consideration' to receive protection under the ministerial exception.").

This holding, if allowed to stand, would prove especially harmful to religious minorities whose leaders might have distinct characteristics that differ from those found in a Christian Church. For example, a Jewish teacher who also supervises the preparation of kosher food might qualify for the ministerial exception, even though a similar role would not exist in a Christian school. See *Shaliehsabou* v. *Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299 (4th Cir. 2004).

B. Shielding the selection of religious educators from governmental interference serves the Religion Clauses' purposes.

The Ninth Circuit's cramped view of the ministerial exception also rests on an erroneous understanding of the Religion Clauses. The Ninth Circuit concluded that exempting religious teachers is "not needed to advance the Religion Clauses' purpose." Pet. App. 15a. This again misreads *Hosanna-Tabor*. That the historical events recounted in *Hosanna-Tabor* involved "heads of congregations and other high-level religious leaders," *id.* at 16a, does not imply that the ministerial exception is limited to high-level leaders. The elementary school teacher in *Hosanna-Tabor* would not have met that test.

Nor do the historical sources quoted by *Hosanna-Tabor* make any distinction between high- and low-level religious employees. Then-Secretary of State Madison explained to Bishop Carroll "that the selection of church '*functionaries*' was an 'entirely ecclesiastical' matter left to the Church's own judgment." *Hosanna-Tabor*, 565 U.S. at 184 (emphasis added)

(quoting Letter from James Madison to Bishop Carroll (Nov. 20, 1806), reprinted in 20 *Records of the American Catholic Historical Society* 63 (1909)); *contra* Pet. App. 16a ("The First Amendment … does not provide carte blanche to disregard antidiscrimination laws when it comes to other employees who do not serve a leadership role in the faith."). Courts should not focus on the "level" of the employee within the organization when considering the ministerial exception. Rather, they should consider the functions he or she performs. Specifically, would governmental interference in the employment relationship undermine the Free Exercise Clause's guarantee of religious autonomy or violate the Establishment Clause's prohibition on excessive church-state entanglement? See *Hosanna-Tabor*, 565 U.S. at 188–89. In this case, the answer to both questions is emphatically yes.

Given the importance of religious education to the propagation of faith and the formation of believers, and the critical role that religious teachers play in fulfilling that mission, religious groups must be free to determine for themselves who will instruct their children in the faith. See *id.* at 200 (Alito, J., concurring). President Thomas Jefferson articulated this principle in a letter to the Ursuline Sisters of New Orleans, who operated a Catholic school for orphaned girls. He wrote, "[t]he principles of the constitution of the United States … are a sure guaranty … your Institution will be permitted to govern itself according to its own voluntary rules without interference from the civil authority." Quoted in 1 Anson Phelps Stokes, *Church and State in the United States* 678 (1950).

The Ninth Circuit disregarded this fundamental maxim of our republic, and failed to afford the "special solicitude to the rights of religious organizations" guaranteed by the First Amendment. *Hosanna-*

Tabor, 565 U.S. at 189. The court below minimized the important role that religious educators, like respondent, serve. They may not "serve a leadership role in the faith" or may not have anything "religious 'reflected in' [their] title," like "Teacher." Pet. App. 11a, 16a. Yet they still provide religious instruction to children.

The decision below, if allowed to stand, will have harmful consequences; in fact, its cramped interpretation of *Hosanna-Tabor* has already been adopted by a separate Ninth Circuit panel in *Morrissey-Berru*, as well as the California Court of Appeals in *Su* v. *Stephen S. Wise Temple*, 244 Cal. Rptr. 3d 546, 553 (Ct. App. 2019). See Pet. App. 44a (R. Nelson, J., dissenting from the denial of rehearing en banc) ("[I]n each successive case, [the Ninth Circuit] ha[s] excised the ministerial exception, slicing through constitutional muscle and now cutting deep into core constitutional bone."). Religious schools in the Ninth Circuit will be pressured to alter their employment practices to more closely resemble the circumstances in *Hosanna-Tabor*. This regime would impose a subtle, but distinct, form of coercion of religious belief and practice. Inevitably, minority religions that do not bestow formal ecclesiastical titles on religious educators or other lay ministers will receive less protection. And religious schools will be compelled to hire or retain teachers who they believe are not suitable voices or models of their faith. See *Hosanna-Tabor*, 565 U.S. at 194.

Such governmental interference in the employment relationship of religious teachers also impermissibly entangles church and state. The Ninth Circuit's departure from *Hosanna-Tabor* will require judges and juries to sit in judgment of the legitimacy and sincerity of a religious group's decisions. Specifically, the

courts will have to arbitrate the religious qualifications and fitness of those schools select to teach and model the faith to their children. See *id.* at 205–06 (Alito, J., concurring) (adjudication of such questions "would require calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church's overall mission"); see also Pet. App. 57a (R. Nelson, J., dissenting from the denial of rehearing en banc) ("[C]ourts are ill-equipped to gauge the religious significance of titles or the sufficiency of training.")

In short, religious educators like respondent fall within the ministerial exception because they have a duty to teach and model the faith to their students, which makes them "the type of employee that a church must be free to appoint or dismiss in order to exercise the religious liberty that the First Amendment guarantees." *Hosanna-Tabor*, 565 U.S. at 206 (Alito, J., concurring). This Court should grant the petition for certiorari to correct the Ninth Circuit's contrary holding.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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