

No. \_\_\_\_\_

---

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*

---

**PETITION FOR A WRIT OF CERTIORARI**

ASHLEY B. ABEL  
BENJAMIN R. DAVIS  
JACKSON LEWIS P.C.  
75 Park Plaza  
4th Floor  
Boston, MA 02116  
(617) 367-0025

KRISTEN K. WAGGONER  
JOHN J. BURSCH  
*Counsel of Record*  
ERIN MORROW HAWLEY  
ALLIANCE DEFENDING FREEDOM  
440 First Street NW  
Suite 600  
Washington, DC 20001  
(616) 450-4235  
jbursch@ADFlegal.org

---

*Counsel for Petitioners*

---

## QUESTIONS PRESENTED

In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), this Court instructed lower courts to consider a variety of factors in determining when the ministerial exception applies. Yet, in clear conflict with that decision and those of other, lower courts, the Massachusetts Supreme Judicial Court rejected Petitioner Gordon College’s designation of its faculty as “ministers,” even though Gordon’s professors are “Christian educators” who are the College’s primary means of accomplishing its religious charge—to “transmit, carry, and advance the Christian mission through teaching, scholarship and service,” App.120a—by integrating their evangelical Christian faith in all their teaching and scholarship. Instead, the court focused on the fact that this faculty member did not teach religion and was not required to lead devotional, prayer, or chapel exercises. That decision misunderstands the importance of the integration of religious faith with academic disciplines, exacerbates a split of authority, and presents two questions for review:

1. Whether professors at religious colleges perform ministerial functions when the college exists to spread its faith, and the college requires faculty, as a primary component of their position, to integrate Christian doctrine into their work and academic disciplines, engage in teaching and scholarship from a decidedly religious perspective, and serve as advisors and mentors for student spiritual formation.

2. Whether the First Amendment requires courts to defer to the good-faith characterization of a ministerial position by a religious organization or church.

**PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE STATEMENT**

Petitioners-Defendants are Gordon College, D. Michael Lindsay, and Janel Curry. Gordon College is a 501(c)(3) educational organization with no parent corporation. No publicly held company owns 10% or more of its stock.

Respondent-Plaintiff is Margaret DeWeese-Boyd.

**LIST OF ALL PROCEEDINGS**

Supreme Judicial Court of Massachusetts, No. 12988, *DeWeese-Boyd v. Gordon College*, judgment entered March 5, 2021.

Massachusetts Superior Court Department, Essex County, No. 1777CV01367, *DeWeese-Boyd v. Gordon College*, judgment entered April 3, 2020.

**TABLE OF CONTENTS**

QUESTIONS PRESENTED ..... i

PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE STATEMENT ..... ii

LIST OF ALL PROCEEDINGS..... ii

APPENDIX TABLE OF CONTENTS ..... v

TABLE OF AUTHORITIES ..... vi

DECISIONS BELOW..... 1

STATEMENT OF JURISDICTION ..... 1

PERTINENT CONSTITUTIONAL PROVISIONS... 1

INTRODUCTION ..... 2

STATEMENT OF THE CASE..... 6

    A. Gordon College ..... 6

    B. Gordon’s ministerial faculty ..... 9

    C. DeWeese-Boyd’s religious qualifications ..... 11

    D. DeWeese-Boyd’s promises to integrate  
    religion into her academic discipline in her  
    teaching and scholarship ..... 12

    E. The College declines DeWeese-Boyd’s  
    request for promotion to full professor. .... 14

    F. Proceedings below ..... 15

REASONS FOR GRANTING THE WRIT.....	18
I. The Ministerial exception and schools.....	20
II. The decision below conflicts with this Court’s decisions in <i>Our Lady of Guadalupe</i> and <i>Hosanna-Tabor</i> and exacerbates a lower-court conflict. ....	23
A. At any religious college whose mission is to integrate its express religious beliefs throughout its academic disciplines, the “function” of a professor is ministerial. ....	23
B. The lower court disregarded what a Gordon College faculty member <i>does</i> — transmit the College’s faith. ....	24
III. The lower court’s decision exacerbated a conflict among appellate courts.....	29
IV. This Court should grant the petition and hold that courts cannot second guess a religious organization’s good-faith belief about who is performing a ministerial function.....	37
V. This case is an ideal vehicle with which to answer the questions presented.....	39
CONCLUSION.....	40

**APPENDIX TABLE OF CONTENTS**

Supreme Judicial Court of Massachusetts  
Opinion  
March 5, 2021 ..... 1a

Superior Court of Massachusetts  
Memorandum of Decision and Order on  
Summary Judgment  
April 2, 2020 ..... 37a

Memo from Faculty Senate to DeWeese-Boyd  
dated December 16, 2016..... 104a

Letter from Provost Curry to DeWeese-Boyd  
dated February 8, 2017..... 108a

Excerpts from Amended Consolidated  
Statement of Undisputed Material Facts ..... 112a

Excerpts from Gordon College Bylaws..... 133a

Excerpts from Gordon College Restated  
Articles of Organization ..... 135a

## TABLE OF AUTHORITIES

### Cases

<i>Adams v. Indiana Wesleyan University</i> , No. 3:09-CV-468, 2010 WL 2803077 (N.D. Ind. July 15, 2010).....	35
<i>Alicea-Hernandez v. Catholic Bishop of Chicago</i> , 320 F.3d 698 (7th Cir. 2003).....	31
<i>Colorado Christian University v. Weaver</i> , 534 F.3d 1245 (10th Cir. 2008).....	36
<i>EEOC v. Catholic University of America</i> , 83 F.3d 455 (D.C. Cir. 1996).....	31, 32
<i>EEOC v. Mississippi College</i> , 626 F.2d 477 (5th Cir. 1980).....	33
<i>EEOC v. Southwestern Baptist Theological Seminary</i> , 651 F.2d 277 (5th Cir. 1981).....	33
<i>Grussgott v. Milwaukee Jewish Day School, Inc.</i> , 882 F.3d 655 (7th Cir. 2018).....	30, 31
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; School v. EEOC</i> , 565 U.S. 171 (2012).....	passim
<i>Kant v. Lexington Theological Seminary</i> , 426 S.W.3d 587 (Ky. 2014) .....	34
<i>Kirby v. Lexington Theological Seminary</i> , 426 S.W.3d 597 (Ky. 2014) .....	33, 34

<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971).....	22, 38
<i>Lishu Yin v. Columbia International University</i> , 335 F. Supp. 3d 803 (D.S.C. 2018) .....	35
<i>Minker v. Baltimore Annual Conference of the United Methodist Church</i> , 894 F.2d 1354 (D.C. Cir. 1990).....	31
<i>NLRB v. Catholic Bishop of Chicago</i> , 440 U.S. 490 (1979).....	22
<i>Our Lady of Guadalupe School v. Morrissey- Berru</i> , 140 S. Ct. 2049 (2020).....	passim
<i>Presbyterian Church in United States v. Mary Elizabeth Blue Hall Memorial Presbyterian Church</i> , 393 U.S. 440 (1969).....	38
<i>Rayburn v. General Conference of Seventh-Day Adventists</i> , 772 F.2d 1164 (4th Cir. 1985).....	31, 32
<i>Richardson v. Northwest Christian University</i> , 242 F. Supp. 3d 1132 (D. Or. 2017).....	36
<i>Stately v. Indian Community School of Milwaukee, Inc.</i> , 351 F. Supp. 2d 858 (E.D. Wis. 2004) .....	35

**Statutes**

28 U.S.C. 1257(a) ..... 1

**Other Authorities**

2 Thomas Hughes, *History of the Society of Jesus  
in North America: Colonial and Federal* (1917) . 20

Michael W. McConnell, *Establishment and  
Disestablishment at the Founding, Part I:  
Establishment of Religion*, 44 Wm. & Mary L.  
Rev. 2105 (2003)..... 20

## **DECISIONS BELOW**

The Superior Court’s order denying Gordon College’s motion to dismiss based on the ministerial exception is reported at 2020 WL 1672714, reprinted in the Appendix (“App.”) at App.37a–103a.

The Supreme Judicial Court of Massachusetts’ decision affirming the Superior Court is reported at 487 Mass. 31 (Mass. 2021), reprinted at App.1a–36a.

## **STATEMENT OF JURISDICTION**

Petitioner timely files this petition from the Supreme Judicial Court of Massachusetts’s March 5, 2021 decision. This Court has jurisdiction under 28 U.S.C. 1257(a).

## **PERTINENT CONSTITUTIONAL PROVISIONS**

The First Amendment to the United States Constitution provides, in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”

## INTRODUCTION

Petitioner Gordon College was formed to provide instruction in the Bible and other subjects while preparing students for Christian ministry and other forms of Christian work. Gordon has maintained its dedication to the historic, evangelical, biblical faith, and should the College ever stray from its core religious mission, its governing charter requires the transfer of all its assets to another evangelical institution, such as the American Bible Society.

Consistent with these purposes, all Gordon community members—including students and faculty—agree to abide by a Religious Life and Conduct statement. Students are required to provide a profession of faith as part of the admissions process. All faculty members must also agree and adhere to a Statement of Faith. Gordon considers its faculty “ministers,” and it determines their effectiveness in large part by the integration and expression of their Christian faith in their teaching and scholarship. Gordon also expects every faculty member to participate actively in the spiritual formation of its students into godly, biblically faithful ambassadors for Christ. That is why the College “commissions” faculty through participation in a worship service, prayer, and dedication.

In sum, Gordon’s professors are Christian educators whom the College expects to transmit, carry, and advance the College’s Christian beliefs and mission through teaching, scholarship, and service. Faculty are the primary means by which Gordon College furthers its religious mission. They must profess the College’s Christian faith, assist students

in their spiritual journey as part of their intellectual formation, be available to minister to students with questions, personal needs, and spiritual exploration, and—most important—inculcate the Christian identity and transmit it to the next generation. The College allocates its resources to support faculty in these ministerial activities.

“The religious education and formation of students 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 of Guadalupe School v. Morrissey-Beru*, 140 S. Ct. 2049, 2055 (2020). “Without that power, a wayward [professor]’s ... teaching[] and counseling could contradict the [College]’s tenets and lead [its students] away from the faith.” *Id.* at 2060. Accordingly, “[j]udicial review of the way in which [Gordon] discharge[s] those responsibilities would undermine [its] independence in a way that the First Amendment does not tolerate.” *Id.* at 2055.

Yet that untenable situation is precisely where Gordon now finds itself. Respondent Margaret DeWeese-Boyd was a Gordon associate professor of social work with a theological degree who was denied a full professorship in 2016 because her performance fell short of the College’s expectations for faculty scholarship and institutional service. She sued in state court. The Massachusetts Supreme Judicial Court concluded that DeWeese-Boyd was required to be a Christian teacher and scholar—but did not perform ministerial functions.

The Supreme Judicial Court of Massachusetts reached this conclusion because faculty were not required to perform certain church-type ministerial acts, such as conducting devotions or teaching a course focused exclusively on religion (as opposed to integrating sectarian instruction into each course). The problem is that the court took the same, cramped reading of this Court's ministerial-exception pronouncements as did the Ninth Circuit in *Our Lady of Guadalupe*. It compared DeWeese-Boyd to the plaintiffs in *Our Lady of Guadalupe* and *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), and found it "significant" that DeWeese-Boyd did not teach religion-only classes, lead her students in prayer, or lead students in devotional exercises or chapel services. App.24a.

But that conclusion ignores the affirmative ministerial expectations Gordon *did* have for its faculty, not to mention the function that all faculty must perform at a devoutly religious college if the college is successfully to pursue its mission of transmitting faith to its students and preparing those students effectively to engage the secular culture as followers of Christ and adherents of the Christian faith. By narrowly defining ministerial activities in an educational setting, the court ignored the unique, functional ways that college professors spiritually shape their students when compared to primary school teachers.

The lower court's decision will have a devastating impact on Gordon and other religious schools, undermining its very purpose for existence. It warrants summary reversal. The court's opinion disregards this Court's functional test in *Hosanna-*

*Tabor* and cannot be reconciled with *Our Lady of Guadalupe*, as even the lower court acknowledged. App.34a (“We recognize that some of the language employed in *Our Lady of Guadalupe* may be read more broadly.”). And it exacerbates a long-simmering, lower-court conflict over the ministerial exception’s application to religious institutions of higher education.

This Court should summarily reverse under *Our Lady of Guadalupe*, which precludes lower courts from “embrac[ing] the narrowest construction’ of the ministerial exception, departing from ‘the consensus ... that the employee’s ministerial function should be the key focus,’ and demanding nothing less than a ‘carbon copy’ of the specific facts” in this Court’s ministerial exception cases. 140 S. Ct. at 2060 (cleaned up).

Alternatively, the Court should grant review to clarify how the ministerial exception applies to college professors who serve as the primary conduit through which religious colleges teach and inculcate religion, are required to incorporate their Christian faith into teaching and scholarship, and are expected to mentor their students’ spiritual development. The Court should also hold that courts should defer to the good-faith characterization of a ministerial position by a religious organization or church.

## STATEMENT OF THE CASE

### A. Gordon College

Massachusetts chartered Gordon College to carry on the faith-based educational work begun in 1889 by its founder, the Reverend Adoniram Judson “A.J.” Gordon. App.112a–113a, 133a. The College’s Restated Articles of Organization announce that Gordon was formed “to provide instruction in the Bible and other subjects; to prepare men and women for the work of foreign and home missions, for the duties of the Christian ministry and other special forms of Christian work.” App.113a, 135a. And Gordon’s By-Laws make clear that the College is dedicated to “[t]he historic, evangelical, biblical faith”; “[s]cholarship that is integrally Christian”; “[l]ife guided by the teaching of Christ and the empowerment of the Holy Spirit”; and “application of biblical principles to transform society and culture.” App.113a, 133a. If the College ever strays from its religious mission, it must transfer all assets to another evangelical institution, such as the American Bible Society, as stipulated by the institution’s governance documents. App.113a; Record Appendix (“R.A.”) 224.

Gordon “approaches its educational task from within the fixed reference points of biblical theism, which provides a coherent perspective on life and the world.” App.114a, R.A.242. As the College explains on its website, “We deepen the faith by integrating Christian beliefs and practice into *all* aspects of our educational experience.”<sup>1</sup>

---

<sup>1</sup> <https://perma.cc/7W73-VSUE> (emphasis added)

To ensure adherence to its religious principles, Gordon requires all its faculty—including Margaret DeWeese-Boyd—to subscribe to the College’s evangelical Christian Statement of Faith, through which they affirm the fundamental tenets of their faith, including that the “66 canonical books of the Bible as originally written were inspired of God.” App.114a–115a, R.A.306. Faculty must also make clear their devotion to a thoroughly Christian educational setting, including agreeing to abide by the College’s Bible-based Statement on Life and Conduct. App.115a, R.A.245, 254. All faculty must also confirm “personal agreement with the Statement of Faith.” App.115a, R.A.304. As Gordon’s President testified, when interviewing a prospective faculty member, he likens joining the College “to joining a religious order,” including “being able to embrace the Christian mission and purpose of the institution.” App.115a–116a, R.A.320.

Admitted students expect to learn from faculty who integrate the College’s faith in their classes. Students applying for admission must “describe [their] faith in Jesus Christ” and explain “why [they] are interested in attending a distinctively Christian college like Gordon College.” App.116a, R.A.324, 328. Like faculty and staff, students must also accept the College’s Life and Conduct Statement and Statement of Faith. *Ibid.* And the College infuses its campus environment with religious art, Bible verses, music, and worship space. App.117a, R.A.316.

Gordon's Life and Conduct Statement specifies the College's Christian "ideals and standards."<sup>2</sup> Those who affirm the Statement "recognize[] that biblical principles are foundational for corporate life and individual behavior," and that the "actions of Christians within a community are not solely a private matter."<sup>3</sup> Indeed, "[a]ttaining common goals and ensuring orderly community life may necessitate the subordination of some individual prerogatives."<sup>4</sup>

The Statement goes on to clarify that "[c]ertain actions are expressly prohibited in Scripture and are, therefore, wrong," and these commandments are "authoritative."<sup>5</sup> "Those words and actions which are expressly forbidden in Scripture, including but not limited to blasphemy, profanity, dishonesty, theft, drunkenness, sexual relations outside marriage, and homosexual practice, will not be tolerated in the lives of Gordon community members, either on or off campus."<sup>6</sup> Community members also agree to forgo alcohol, drugs, and tobacco, and to honor the Sabbath.<sup>7</sup> DeWeese-Boyd's complaint admits she no longer agrees with two significant religious beliefs in the Statement yet attempts to use the courts to force the College to make her a full professor.

---

<sup>2</sup> <https://perma.cc/A3JN-6BCJ>.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

## B. Gordon’s ministerial faculty

Nearly a century ago, Gordon’s Board of Trustees emphasized it could hire only faculty who support its evangelical Christian doctrines and mission. App.117a–118a, R.A.224. So, its Faculty Handbook requires that all professors integrate Christian faith with their teaching and academic discipline. “[F]aculty are expected to be fully prepared in all facets of their tasks as Christian teachers and advisors, both in and outside the classroom. They must engage students in their respective disciplines *from the perspectives of Christian faith* and to teach with accuracy and integrity.” App.118a, R.A.256 (emphasis added).

Unlike a secular institution, the Handbook continues, “[o]ne of the distinctives of Gordon College is that each member of faculty is expected to *participate actively* in the spiritual formation of [its] students into godly, biblically-faithful ambassadors for Christ.” App.118a, R.A.282 (emphasis added). “In the Gordon College context, faculty members are both educators *and ministers* to [their] students.” App.119a, R.A.282 (emphasis added). Gordon’s teaching pillars include “integration” of faith and learning—to “help[] students make connections between course content, Christian thought and principles, and personal faith and practice[,]” “encourage[] students to develop morally responsible ways of living in the world *informed by biblical principles and Christian reflection*[,]” and “cultivate[] a sense that ‘knowing’ is a matter not just of the intellect, *but also of faith*.” App.119a, R.A.283–84 (emphasis added).

The College takes these directives seriously. Gordon conducts seminars for professors concerning the integration of faith and learning, including discussions and required reading. App.119a, R.A.334–35. A professor’s success at integrating faith and learning is a key factor that Gordon considers for performance reviews, promotions, and applications for tenure for all faculty members. App.120a, R.A.262–63, 266–67. And Gordon has a “Vision Day” for faculty and staff at which the College “commissions” new and current faculty through participation in a worship service, prayer, and dedication. App.120a, R.A.322, 338–40.

In sum, Gordon’s professors are “Christian educators” who are the College’s primary means of accomplishing its religious mission: to “transmit, carry, and advance the Christian mission through teaching, scholarship and service.” App.120a, R.A.318. Professors must “profess the Christian faith,” “assist students in their spiritual journey as part of their intellectual formation,” “be available to minister to students with questions, personal needs, [and] spiritual exploration,” and “*inculcate the Christian identity and transmit it to the next generation.*” App.120a, R.A.320 (emphasis added). And Deweese-Boyd’s ministerial responsibilities were the same: “To carry and embody the Christian faith, to advance it in its formation in the lives of our students; to bring Christian reflection to bear on her scholarship; to disciple, mentor, give counsel to the students; and to serve the[] Christian purpose of the institution.” App.121a, R.A.321. “There is abundant record evidence that [Deweese-Boyd] performed vital religious duties.” *Our Lady of Guadalupe*, 140 S. Ct. at 2066.

### C. DeWeese-Boyd's religious qualifications

DeWeese-Boyd initially applied for a Gordon College faculty position in its social work department in February 1998. Her cover letter to the Provost explained that she had a Master's degree from Covenant Theological Seminary in General Theological Studies as well as Southern Baptist missionary experience, a background that "could be of particular benefit to Gordon College students." App.121a, R.A.342. In an accompanying document, she emphasized her belief that "the environment provided by the Christian college is expressly germane to social work education," because "Christians have an undeniable call to minister to others." App.122a, R.A.345.

In her employment application, DeWeese-Boyd agreed to Gordon's Statement of Faith, stated her Christian beliefs, explained how her Christian faith affects and is incorporated into her scholarship and academic discipline, and emphasized that her educational philosophy is founded in Christianity. App.122a, R.A.359–75. DeWeese-Boyd's application further explained that her "Christian commitment affects [her] scholarship," App.123a, R.A.372, and promised that she would "guide and mentor each student in such a way as to help her discern how Christianity impacts upon her particular discipline," App.123a, R.A.373.<sup>8</sup>

---

<sup>8</sup> While DeWeese-Boyd tried to backtrack from these statements about spiritual mentorship at her deposition, she admitted to making them and believing them when made, and that she continues to teach students "how to do scholarship which is founded on Christian principles and values." App.123a, R.A.353.

**D. DeWeese-Boyd’s promises to integrate religion into her academic discipline in her teaching and scholarship**

As Gordon faculty members progress through the promotion and tenure application process, they must detail how they integrate faith and learning, including submission of an “integration paper” at the end of their third year. App.125a, R.A.265. In her paper, DeWeese-Boyd declared that her “work as a Christian scholar is reliant upon what [she] understand[s] to be the ethical responsibility of the Christian interacting with the world.” App.125a, R.A.382, 386. She also explained her idea of “faithful scholarship”—scholarship “faithful to the call of Christ as made evident in scripture, revealed in the Holy Spirit, and witnessed to by the holy catholic church.” *Ibid.*

When applying for tenure in 2009, DeWeese-Boyd submitted a paper titled, “Reflections on Christian Scholarship.” App.126a, R.A.388–97. Gordon rejected it because the paper was not explicit enough about integration of the Christian faith. App.126a, R.A.355. The College believed that DeWeese-Boyd needed to integrate the Christian faith *more* explicitly into her work—*i.e.*, to be more faith-based. *Ibid.*

DeWeese-Boyd’s second attempt more explicitly set forth her own understanding of those obligations:

- “I understand the work of integration to be fundamentally about ... pursuing scholarship that is faithful to the mandates of Scripture”;

- “*My Christian commitment also affects my scholarship by allowing me to see my work as participation in the ministry of Christian reconciliation*”;
- “In my vocation as [a] Christian Scholar, I strive to make useful contributions to the body of knowledge in my area of expertise—contributions informed by a uniquely Christian perspective”;
- And “a desire to follow Christ ... plays out in the methods with which I teach and how I interact with students.” [App.126a–127a, R.A.388–97 (emphasis added).]

DeWeese-Boyd’s 2016 application for promotion reiterated that her “desire to follow Christ informs” her “approach to teaching, the topics [she] engage[s] as a scholar, and [her] approach to institutional service.” App.128a, R.A.399. She understood her obligation to “pursu[e] scholarship that is faithful to the mandates of Scripture, the vocational call of Christ, and the dictates of conscience.” App.128a, R.A.407. Consistent with these ministerial responsibilities, DeWeese-Boyd attended religious services with students at Gordon’s campus chapel, convocations, and religious gatherings. App.128a–129a, R.A.357. She attended the same church as some Gordon students. *Ibid.* And her student evaluations reflected the critical necessity of integrating faith into students’ social-work education. App.130a, R.A.427–31.

**E. The College declines DeWeese-Boyd's request for promotion to full professor.**

According to Gordon's Faculty Handbook, the "Faculty Senate and the provost are responsible for coordinating evaluation efforts." R.A.261. In DeWeese-Boyd's case, the Faculty Senate recommended her to promotion to full professor, App.104a–107a, but Gordon's provost, exercising her rightful prerogative, disagreed, App.108a–111a. The provost noted that DeWeese-Boyd's scholarly productivity was "limited to only a single publication" from 2008 to 2017, which did "not reach acceptable levels of scholarly productivity for a Gordon faculty member, especially one who has been granted two sabbaticals during this time." App.108a–109a. DeWeese-Boyd also apparently had "not made a professional presentation" in the past four years. App.109a.

Other shortfalls included DeWeese-Boyd's lack of responsiveness "even as [she] applied for this promotion," App.110a, and in impermissibly assuming the "Director of Social Work" position "without permission," placing the "program at risk," *ibid.* DeWeese-Boyd also engaged in "a larger pattern of inconsistent contributions to the institution." App.111a. As the provost told her, "When you want to do something, you are willing, but sometimes when the institution asks you to step up, you decline. This needs to change." *Ibid.*

In conclusion, the provost stated that DeWeese-Boyd's "performance is meritorious in teaching, but not in scholarship or institutional service." App.111a. The provost encouraged DeWeese-Boyd "to make greater progress in [her] professionalism and

institutional service.” *Ibid.* Specifically, the provost asked her to “follow through or demonstrate enough diligence to bring a project to completion” and to “act with consistent professionalism,” and criticized her “lack of responsiveness.” *Ibid.* The provost hoped “this detailed feedback [would] provide concrete ideas for improvement in the years ahead.” *Ibid.* Gordon’s President “concurred.” App.108a.

DeWeese-Boyd takes a different view. She says Gordon denied her promotion to full professor because she “has been one of the most outspoken critics among the Gordon College faculty regarding the College’s policies and practices” concerning “LGBTQ+ individuals” and Gordon’s beliefs about same-sex relationships. R.A.19 ¶ 18. She says this “outspoken” criticism—and her gender—resulted in the College denying her request for promotion. R.A.21 ¶ 25.

#### **F. Proceedings below**

In the trial court, the parties filed cross-motions for summary judgment on Gordon’s “ministerial exception” affirmative defense. The trial court denied Gordon’s motion and granted that of DeWeese-Boyd.

The trial court began by correctly rejecting DeWeese-Boyd’s contention that Gordon is merely a liberal arts college with a Christian “character.” The court recognized, correctly, that Gordon is a religious institution for purposes of the ministerial exception. App.63a–77a. In so ruling, the court pointed to the College’s Articles of Incorporation, Bylaws, Mission Statement, Statement of Faith, Statement of Life and Conduct, campus chapels, artwork, music, and expectations regarding the integration of faith and teaching. *Ibid.*

The trial court then held that “DeWeese-Boyd is not a minister for purposes of the exception,” App.79a, for four reasons. First, it said, DeWeese-Boyd “had no religious duties and did not actively promote the tenets of evangelical Christianity.” App.98a. Second, her role “did not involve, expect or require proselytizing on behalf of Gordon College.” *Ibid.* (cleaned up). Third, despite the Faculty Handbook’s view of Gordon faculty as “ministers,” DeWeese-Boyd’s application touting both her Covenant Theological Seminary education and her Southern Baptist missionary experience, and her own paper wherein she saw her work as “participation in the ministry,” the court said she “neither held a ministerial title nor held herself out as a minister.” App.99a. Finally, “DeWeese-Boyd did not perform any important religious functions for Gordon College.” *Ibid.*

The Massachusetts Supreme Judicial Court allowed Gordon a direct appeal, then affirmed. App.1a–36a. That court’s overly constrained analysis of the ministerial exception was remarkably like the Ninth Circuit’s in *Our Lady of Guadalupe* and exhibited a striking lack of deference to the College’s own understanding of its faculty’s ministerial role.

The court held that Gordon College was a religious institution, and therefore entitled to “autonomy with respect to internal management decisions that are essential to the [College’s] central mission,” including the “selection of the individuals who play certain key roles.” See *Our Lady of Guadalupe*, 140 S. Ct. at 2060. Further, the court recognized that DeWeese-Boyd was “required to, and did, both engage in teaching and scholarship from a Christian perspective and integrate her faith into her

work.” App.24a. The court also acknowledged that the “integrative responsibility was an important aspect of being a professor at Gordon,” App.25a, highlighting that the College likens “joining Gordon to responding to a formal call to religious service,” *ibid.*

Nevertheless, the court embraced an unconstitutionally narrow construction of the ministerial exception, demanding that DeWeese-Boyd’s role as a professor of social work mirror the role of grade-school teachers in this Court’s ministerial exception cases. Employing a “checklist” approach, *Our Lady of Guadalupe*, 140 S. Ct. at 2067, the lower court dodged the functional test, focusing exclusively on the College not requiring faculty “to meet with students for spiritual guidance, pray with students, directly teach them doctrine, or participate in religious rituals or services with them,” App.26a. The court deferred to DeWeese-Boyd’s “view” that she was not a minister, App.31a, and her opposition to adding the word “minister” to describe professors in the Faculty Handbook, *ibid.*, rather than defer to the College’s good-faith views of its own faculty positions.

While recognizing that *Our Lady of Guadalupe* “may be read more broadly,” App.34a, the court held that DeWeese-Boyd’s responsibilities were “significantly different” than “teachers of religion at primary or secondary schools in the cases that have come before the Supreme Court,” App.31a, while ignoring the difference between a religious college and grade school setting. Moreover, the court reasoned, the opposite conclusion would mean that *all* College employees—“whether they be coaches, food service workers, or transportation providers”—must be ministers, App.35a, even though this case is solely

about whether *professors* at religious colleges are ministers when required to engage in teaching and scholarship from a religious perspective, integrate their faith into their academic disciplines, and serve as spiritual advisors and mentors to students.

Accordingly, the court rejected Gordon’s ministerial defense, App.36a, involving a teacher who is charged with transmitting the Christian faith to her students and integrating that faith in her academic work and teaching, and whom the College considers to be a minister. So a factfinder must scrutinize whether Gordon rejected DeWeese-Boyd for full professorship because Gordon believed that DeWeese-Boyd needed to improve her scholarship and institutional service or, as she argues, due to her public advocacy *against* the College’s express religious beliefs regarding human sexuality—in which case Gordon could be liable under Massachusetts non-discrimination law.

### REASONS FOR GRANTING THE WRIT

In *Our Lady of Guadalupe*, this Court explained that the “religious education and formation of students 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.” 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.*

That reasoning applies with full force to a private religious college. If Gordon cannot select, retain, and promote its faculty free of government interference, it cannot faithfully carry out its religious mission. And if that happens, Gordon's governing documents require it to disband and to distribute its assets to another evangelical institution.

The Massachusetts Supreme Judicial Court obviously does not share the College's religious belief that a faculty member's integration and teaching of the Christian faith with an academic discipline is inherently a religious and ministerial function and critical to the College's very existence. Nor does that court share the College's understanding of how the Christian faith must be integrated into classes such as social work. But the First Amendment requires that the courts respect the College's religious beliefs rather than apply a flawed perception of what the courts think Christian education *should* be.

The decision below conflicts with *Our Lady of Guadalupe* and *Hosanna-Tabor* and warrants summary reversal. Alternatively, plenary review is warranted because the decision below exacerbates a conflict among the lower courts regarding whether professors at religious institutions can qualify as ministers, and because this petition squarely raises a question reserved in *Our Lady of Guadalupe*: whether courts should defer to religious organizations' own understanding of who is a "minister."

## I. The Ministerial exception and schools

Before the American Revolution, a “principal means of government control” over churches were laws that granted “the power to appoint prelates and clergy.” Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2132 (2003). Such laws resulted in “continual conflicts between clergy-men, royal governors, local gentry, towns, and congregants over the qualifications and discipline of ministers.” *Id.* at 2137. Some such laws controlled religion through education. For example, an early-18th century Maryland law “prohibited any Catholic priest or lay person from keeping school, or taking upon itself the education of youth.” 2 Thomas Hughes, *History of the Society of Jesus in North America: Colonial and Federal* 443–44 (1917).

Out of this entanglement, the Religion Clauses were born. “[T]he founding generation” adopted them to “ensure[] that the new Federal Government—[] would have no role in filling ecclesiastical offices.” *Hosanna-Tabor*, 565 U.S. at 183–84. “The 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.” *Ibid.*

In *Hosanna-Tabor*, this Court articulated several reasons for officially recognizing what lower courts had long applied: the so-called ministerial exception. “Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so” entangles the state in religious organizations’ affairs in the same way as judges deciding religious doctrinal

disagreements. 565 U.S. at 188. Doing this “interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs,” impermissibly interfering with “a religious group’s right to shape its own faith *and mission* through its appointments.” *Ibid.* (emphasis added). Accordingly, “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Our Lady of Guadalupe*, 140 S. Ct. at 2060. If a religious organization lacked that power, a wayward, key employee’s “teaching[ ] and counseling could contradict the church’s tenets and lead the congregation away from the faith.” *Ibid.*

While determining whether a position qualifies for the ministerial exception may involve consideration of “a variety of factors,” *Our Lady of Guadalupe*, 140 S. Ct. at 2063, “[w]hat matters, at bottom, is what an employee does,” *id.* at 2064. There is no “rigid formula” but rather the question is whether an employee performs “religious duties.” *Id.* at 2066–67. “Educating and forming students in the ... faith ... [and] guid[ing] their students, by word and deed, toward the goal of living their lives in accordance with the faith” are some such duties. *Id.* at 2066. Further, a “religious institution’s explanation of the role of such employees in the life of the religion in question is important.” *Ibid.*

Indeed, this Court has oft recognized the importance of religious-school teachers transmitting the faith. In *Hosanna-Tabor*, this Court explained that the grade-school teacher at issue was charged with “leading others toward Christian maturity” through her teaching and “performed an important role in

transmitting the Lutheran faith to the next generation.” 565 U.S. at 192 (cleaned up). In other contexts, this Court has stressed “the importance of the teacher’s function in a church school.” *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 501 (1979). Religious schools are “a powerful vehicle for transmitting the ... faith to the next generation,” “an integral part of the religious mission,” and teachers are a “prime factor for the success or the failure of the school[’s mission].” *Lemon v. Kurtzman*, 403 U.S. 602, 615–16, 618 (1971) (cleaned up).

*Our Lady of Guadalupe* doubled down on this point: “implicit in our decision in *Hosanna-Tabor* was a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” 140 S. Ct. at 2064. The opinion cited favorably to a *Hosanna-Tabor* concurrence concluding that the ministerial exception must include employees who “serve[] as a messenger or teacher of” a religious organization’s faith. *Ibid.* (cleaned up).

Many religious schools “expressly set themselves apart from public schools that they believe do not reflect their values.” *Id.* at 2065. And a survey of “the rich diversity of religious education in this country” demonstrates “the close connection that religious institutions draw between their central purpose and educating the young in the faith.” *Id.* at 2066.

**II. The decision below conflicts with this Court’s decisions in *Our Lady of Guadalupe* and *Hosanna-Tabor* and exacerbates a lower-court conflict.**

**A. At any religious college whose mission is to integrate its express religious beliefs throughout its academic disciplines, the “function” of a professor is ministerial.**

No matter the classroom subject, authentically religious colleges and universities expect their faculty to embody and to further the institution’s mission of transmitting their religious faith. Such schools’ mission is not merely to educate students but to teach them particular religious beliefs and help them integrate those beliefs into every academic discipline. From that education and spiritual formation, the students graduate with the tools to live their faith in the public square. “When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters.” *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring). That is why religious colleges’ governing documents, mission statements, faculty handbooks, and codes of conduct are all ordered toward requiring professors to teach and to show students how to live religiously.

These schools understand that achieving their mission is possible only if they can hire, retain, and promote faithful faculty who are true to the institutional mission and themselves embrace and model their religion to their students. Thus, faithful religious schools create religious hiring requirements, demand that their faculty successfully integrate faith and education in and out of the classroom, and require

that professors sign statements of faith and conduct. All these things represent the essential role that faculty play in furthering their schools' religious missions.

**B. The lower court disregarded what a Gordon College faculty member *does*—transmit the College's faith.**

In denying Gordon's ministerial defense, the Supreme Judicial Court of Massachusetts did exactly what *Our Lady of Guadalupe* instructed not to do: insist on a rigid checklist that, to qualify as a minister, a religious-school teacher must: (1) teach a religion class; (2) pray with students; and (3) lead students in devotional exercise of chapel services. App.35a (considering these factors "significant"). The more appropriate inquiry examines her function:

- Like Perich, the teacher in *Hosanna-Tabor*, DeWeese-Boyd carried the title "minister," App.119a, R.A.282, and was hired in part largely because of her Covenant Theological Seminary degree and training, App.121a, R.A.342.
- Also like Perich, Gordon College invited DeWeese-Boyd to a formal commissioning each and every school year—through participation in a worship service, prayer, and dedication. App.120a, R.A.322, 338–40.

- Although she (conveniently) disavows her ministerial role, DeWeese-Boyd, like Perich, accepted all of Gordon’s religious terms for faculty ministers, including the College’s evangelical Christian Statement of Faith, App.115a, R.A.306, and Bible-based Statement on Life and Conduct, App.115a, R.A.245, 254. That is, she “join[ed the] religious order,” including “embrac[ing] the Christian mission and purpose of” Gordon College, App.115a–116a, R.A.320. Every year she signed an annual contract reaffirming those commitments and explicitly embraced them in each application for promotion and advancement to tenure.
- Like Perich, DeWeese-Boyd’s job duties “reflected a role in conveying [her Christian school]’s message and carrying out its mission.” *Hosanna-Tabor*, 565 U.S. at 192. “[I]nside and outside the classroom,” she was expected to function as a “Christian teacher[ ] and advisor[ ].” App.118a, R.A.256. “In the Gordon College context, faculty members are both educators *and ministers* to [their] students.” App.119a, R.A.282 (emphasis added).
- Like Morrissey-Berru and Biel, the teachers in *Our Lady of Guadalupe*, DeWeese-Boyd’s employment agreement and faculty handbook “specified in no uncertain terms that [she was] expected to help the school[ ] carry out [its] mission” and that her “work would be evaluated to ensure [she was] fulfilling that responsibility.” 140 S. Ct. at 2066; App.119a–120a, R.A.262–63, 266–67.

- Like Morrissey-Berru and Biel, DeWeese-Boyd was a “member[ ] of the school staff who [was] entrusted *most directly* with the responsibility of educating ... students in the faith.” 140 S. Ct. at 2066 (emphasis added). App.119a, R.A.283–84 (all Gordon faculty must “encourage students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection[,]” and “cultivate[ ] a sense that ‘knowing’ is a matter not just of the intellect, but also of faith.”)
- Like Morrissey-Berru and Biel, DeWeese-Boyd was “expected to guide [her] students, by word and deed, toward the goal of living their lives in accordance with the faith.” App.118a, R.A.282 (“each member of faculty is expected to participate actively in the spiritual formation of [its] students into godly, biblically-faithful ambassadors for Christ”). *Ibid.*
- Like Morrissey-Berru and Biel, DeWeese-Boyd’s school employer “saw [her] as playing a vital part in carrying out the mission of the” College. 140 S. Ct. at 2066; App.120a, R.A.320 (faculty must “profess the Christian faith,” “assist students in their spiritual journey as part of their intellectual formation,” “be available to minister to students with questions, personal needs, [and] spiritual exploration,” and “*inculcate the Christian identity and transmit it to the next generation*”) (emphasis added).

- Finally, because a “religious institution’s explanation of the role of such employees in the life of the [institution] in question is important,” *Our Lady of Guadalupe*, 140 S. Ct. at 2066, it is significant that Gordon viewed DeWeese-Boyd a Christian minister, App.119a–120a, R.A.282, 321.

In sum, “[t]here is abundant record evidence that [DeWeese-Boyd] performed vital religious duties.” *Our Lady of Guadalupe*, 140 S. Ct. at 2066.

Given all this, it was wrong for the Massachusetts Supreme Judicial Court to limit this Court’s functional test by treating the facts in *Hosanna-Tabor* and *Our Lady of Guadalupe* as “checklist items to be assessed and weighed against each other in every case.” *Our Lady of Guadalupe*, 140 S. Ct. at 2067. It was also wrong to devalue the profound importance of the obligation of Gordon’s faculty to integrate the College’s evangelical Christian faith into their respective academic disciplines. The fact that DeWeese-Boyd was expected to integrate her faith into her social work and sociology courses rather than teach an explicitly designated religion class in the Bible department (which Morrissey-Beru and Biel did a couple of hours weekly), pray with her students (as Morrissey-Beru and Biel did a couple of minutes daily), or lead students in devotional exercises or chapel services (as Perich did), did not change the reality of her function or Gordon College’s good-faith beliefs about its faculty.

The faulty logic driving the lower court's decision appears to be its mistaken belief that allowing Gordon to claim DeWeese-Boyd as a minister would inevitably lead to categorizing as ministers *every* person on a religious-institution's staff, from janitors, App.34a–35a, to “coaches, food service workers, or transportation providers,” App.35a. But this case is not about any of those other positions, which do not involve the obligation to transmit the faith through teaching. Gordon is not asking this Court to issue such a broad holding, nor should the Court do so.

Of specific importance here, a Christian professor serves as “messenger” and “teacher.” *Our Lady of Guadalupe*, 140 S. Ct. at 2064. Indeed, at Gordon College, professors are expected to *transmit* the Christian faith as articulated and required by the College. And a test that focuses on “what an employee does,” *ibid.*, naturally requires a facts-and-circumstances analysis of each institution and each employee's designated role.

So, while DeWeese-Boyd's position was not the same as the K-6 teachers in *Hosanna-Tabor* and *Our Lady of Guadalupe*, her “core responsibilities” as a Gordon College minister “were essentially the same.” *Our Lady of Guadalupe*, 140 S. Ct. at 2066. Indeed, inculcation and modeling of the Christian faith to Gordon's students was of utmost importance. This Court should not allow its pronouncements to be so easily flaunted.

### **III. The lower court's decision exacerbated a conflict among appellate courts.**

The Massachusetts Supreme Judicial Court's ruling also deepened an existing split in lower courts. As the court acknowledged in its post-*Our Lady of Guadalupe* ruling, “the parameters of the [ministerial] exception”—that is, who's “covered by the ministerial exception—remain ... unclear.” App.2a. And the “most difficult issue,” the court said, was “how to evaluate [a professor's] responsibility to integrate her Christian faith into her teaching and scholarship.” *Ibid.*

This question has puzzled many courts. The Seventh and D.C. Circuits, for example, hold that teachers at religious institutions who integrate their faith into their work perform ministerial functions, while the Fifth Circuit and the Kentucky Supreme Court have ruled that such teachers are not necessarily performing such functions. This split is exacerbated by conflicting trial-court decisions. This Court should resolve those conflicts rather than allowing different outcomes based merely on where a college is located.

#### **A. The Seventh Circuit and D.C. Circuit hold that teachers at religious institutions who integrate their faith into their work and academic disciplines are ministers.**

Applying *Hosanna-Tabor*, the Seventh Circuit has held that a Hebrew teacher at a Jewish school is a minister, in large part because she was expected to “integrate religious teachings into” her lessons. *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882

F.3d 655, 659 (7th Cir. 2018). Nothing in her title—“Hebrew teacher”—or in her use of that title suggested that conclusion. *Ibid.* For example, the teacher never identified “as an ambassador of the Jewish faith.” *Ibid.* She did not believe anyone would see her as a “religious leader.” *Ibid.* And she “consistently maintained that her teaching was historical, cultural, and secular”—not “religious.” *Ibid.* Yet, because she integrated the Jewish faith in her teachings, and so was a “teacher of faith’ to the next generation,” the court held that she was a minister covered by the ministerial exception. *Id.* at 661 (citing *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring)) (cleaned up).

In fact, that latter function “outweighed other considerations,” as the court applied its “totality-of-the-circumstances test.” *Ibid.* Like DeWeese-Boyd, the teacher was “not required to complete” religious training to perform her role. *Id.* at 659. But she did have a background in religious education, “which the former principal said was a critical factor in the school’s hiring her.” *Ibid.* And while she “approached her teaching from a ‘cultural’ rather than religious perspective,” and never believed she was “required” to perform “religious functions,” that did not matter to the court because “the school clearly intended for her role to be connected to the school’s Jewish mission.” *Id.* at 660; cf. *Hosanna-Tabor*, 565 U.S. at 192 (esteeming that the teacher was “expressly charged” with “lead[ing] others to Christian maturity”).

Like Gordon here, the school expected the teacher “to follow its expressly religious mission and to teach” Hebrew from a Jewish perspective, so as to instill a Jewish “identity in [its] learners.” *Grussgott*, 882 F.3d

at 660. This, along with the school's interest in her background in religious education during her hiring, "confirm[ed] that the school expected [the teacher] to play an important role in 'transmitting the [Jewish] faith to the next generation.'" *Id.* at 661 (citing *Hosanna-Tabor*, 565 U.S. at 192). And even if the teacher "did not know this," the Seventh Circuit reasoned, the "school's expectation" that she perform this function is what "matters," and her job included aspects "that simply would not be part of a secular teacher's job at a secular institution." *Ibid.*

This holding reinforces a rule the Seventh Circuit has long recognized: the determination "of whose voice speaks for the [religious institution] is *per se* a religious matter." *Alicea-Hernandez v. Catholic Bishop of Chi.*, 320 F.3d 698, 704 (7th Cir. 2003) (quoting *Minker v. Baltimore Annual Conf. of the United Methodist Church*, 894 F.2d 1354, 1356 (D.C. Cir. 1990)). No less than a teacher at a religious school, or a "press secretary" at a church, professors are the "voice" of their institution; they publicly "convey[ ] the message of" their college. *Ibid.* And so the ministerial exception protects a religious college's choice about who will "teach its message." *Ibid.*

Similarly, the D.C. Circuit has held "that the ministerial exception encompasses *all* employees of a religious institution, whether ordained or not, whose primary functions serve its spiritual ... mission." *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 463 (D.C. Cir. 1996) (quoting *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)) (emphasis added). The court then applied the exception to cover a Catholic university's decision not to give tenure to one of its professors. *Id.* at 464.

The D.C. Circuit noted that while the professor was “not a priest,” she sought to obtain tenure “in a field [Canon Law] that is” critical “to the spiritual mission of her Church.” *Id.* at 464. But its determination turned primarily on whether the professor’s “primary duties consist of teaching, spreading the faith, ... or supervision or participation in religious ritual and worship.” *Id.* at 461 (citing *Rayburn*, 772 F.2d at 1169). And her role “clearly fit[] this description,” because she was part of a faculty whose “stated mission is to ‘foster and teach sacred doctrine and the disciplines related to it.’” *Id.* at 463–64 (quoting the University’s documents).

In other words, if Gordon College was in the Seventh or D.C. Circuits, it likely would have prevailed on its ministerial defense. That is because DeWeese-Boyd was called to teach from a distinctly Christian perspective to instill a Christian identity in Gordon students, and because she was part of a faculty whose stated mission was to grow and spread the Christian faith both inside and outside the classroom.

**B. The Fifth Circuit and Kentucky Supreme Court hold that the status of teachers at religious institutions who integrate their faith into their work depend on the courses they teach.**

The Fifth Circuit and the Kentucky Supreme Court agree that professors *can* be ministers. But they distinguish between professors who integrate their faith into disciplines they teach and those who teach their faith as a discipline.

Long before *Hosanna-Tabor*, the Fifth Circuit recognized that seminary professors are ministers when many who hold that role “have been ordained,” the institution expects them to teach the “whole of religious doctrine,” and only religious courses are taught. *EEOC v. Sw. Baptist Theological Seminary*, 651 F.2d 277, 283-84 (5th Cir. 1981). The ministerial exception covers them, the court said, because they serve as “intermediaries between [the church] and [its] future ministers.” *Id.* at 283.

In contrast, the Fifth Circuit has not applied the ministerial exception to cover professors at religious institutions who do not teach the whole of religious doctrine. In *EEOC v. Mississippi College*, for example, the court held that a psychology professor at a religious college was not a minister because, while the professor was “expected to serve” as a Christian example for her students, she taught a secular discipline. 626 F.2d 477, 485 (5th Cir. 1980). The professor did not teach “religious doctrine,” meet any “religious needs,” or act as an intermediary “between a church and its congregation.” *Ibid.*

Similarly, after *Hosanna-Tabor*, the Kentucky Supreme Court decided two cases involving two professors at the same seminary. And the court applied the ministerial exception to cover one professor, but not the other. A crucial reason: one professor taught theology, the other history.

In *Kirby v. Lexington Theological Seminary*, the court held that an Instructor of Church and Society at a seminary was a minister because, while he was “not ordained,” he was very active in promoting “the Seminary’s mission.” 426 S.W.3d 597, 611 (Ky. 2014).

For example, he engaged in “religious ceremonies,” taught “Christian doctrine,” and was a “messenger of the Seminary’s faith.” *Id.* at 611, 614. But the content of his teaching was critical, because the court said that “simply engaging in religious discourse” in the classroom is not enough; the professor must teach “doctrine or tenets of the faith.” *Id.* at 613 n.63.

The Kentucky Supreme Court rehearsed this distinction in *Kant v. Lexington Theological Seminary*, 426 S.W.3d 587 (Ky. 2014), an opinion on which the Massachusetts Supreme Judicial Court relied heavily below. In that case, the court ruled that a “Professor of Religious Studies” was *not* a minister even though he had taught classes on topics like “Jewish Studies, theology, ethics, Hebrew Bible, New Testament, world religions, American religion, Greek, and Hebrew.” *Id.* at 588, 592. And while the professor focused on history classes later in his tenure, he “participated in Seminary life” in many special ways—reading scripture, giving sermons, and attending “chapel services.” *Id.* at 593.

Yet the court did not believe these activities were “enough” to be “ministerial.” *Id.* at 594. It criticized the lower court for holding that a professor “who promotes the [religious] mission of the religious institution is a minister,” suggesting that this fact bears “little insight into whether” the professor’s duties carry “substantial religious significance.” The Kentucky Supreme Court instead repeated that the promotional activity “must be linked to the tenets of the religious institution’s faith.” *Ibid.* The professor’s instruction, it said, “exemplifie[d] the distinction between ‘teaching about religion’ and ‘the teaching of religion.’” *Id.* at 594-95.

**C. Trial courts are split over whether teachers at religious institutions who integrate their faith into their work can be ministers.**

Federal trial courts vary widely on the first question presented.

A federal trial court in Indiana ruled that a professor and chair of the social work department at a religious university was a minister, even though she did not believe she taught the faith and felt free to express her views in the classroom. *Adams v. Indiana Wesleyan Univ.*, No. 3:09-CV-468, 2010 WL 2803077, at \*8 (N.D. Ind. July 15, 2010). The court held this in part because she was “required to integrate church doctrine into [her] teaching.” *Id.* at \*9. Accord *Stately v. Indian Cmty. Sch. of Milwaukee, Inc.*, 351 F. Supp. 2d 858, 870 (E.D. Wis. 2004) (applying similar logic).

Likewise, in *Lishu Yin v. Columbia Int’l Univ.*, a federal trial court in South Carolina ruled that a TEFL-ESL instructor at a religious university was a minister, even though she did not teach theology courses or believe that she was a minister. 335 F. Supp. 3d 803, 815–18 (D.S.C. 2018). The court held this in part because she “integrated biblical materials into her courses, helped “prepare[] students for ministry,” and encouraged them to “follow the Lord’s calling” in their lives. These factors, the court said, “weigh[ed] heavily ... in favor of applying the ministerial exception.” *Id.* at 817.

In contrast, a federal trial court in Oregon ruled that an assistant professor of exercise science at a religious university was not a minister, even though she “was expected to integrate her Christianity into

her teaching and demonstrate a maturing Christian faith.” *Richardson v. Nw. Christian Univ.*, 242 F. Supp. 3d 1132, 1145 (D. Or. 2017). The court said that function was “secondary to her secular role,” and if this were the test, the court reasoned, hardly “any teacher at a religious school would fall outside the [ministerial] exception. *Ibid.*”

But that’s the point. Whether integrating faith into an academic discipline is a religious function is fundamentally a religious question. The line between teaching doctrine and teaching students to apply doctrine to so-called secular disciplines—if there can be one—“is highly subjective.” *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1262 (10th Cir. 2008). Whether teaching is ‘religious’ or ‘secular’ “depends as much on the observer’s point of view as on any objective evaluation of the educational activity.” *Id.* at 1263. Disagreements on this designation “are to be expected in a diverse society.” *Ibid.* But the First Amendment forbids “government officials [from sitting] as judges” over the doctrine “quotient” of teaching that a college deems religious. *Ibid.*

Gordon College does not distinguish the religious nature of particular academic disciplines. DeWeese-Boyd’s field of social work is replete with religious questions and issues, such as “What’s the ideal family in which to rear children?” “What is the nature of human sexuality?” and “Should foster parents take their foster children to religious worship services with them?” Faith can and should inform the answers to these questions. That is especially true where all students have chosen to attend the institution *because of* its faith-based identity and mission.

The Supreme Judicial Court of Massachusetts, however, has impermissibly interposed its belief regarding the centrality of religion to teaching social work from an integrated Christian perspective in place of Gordon's. Imagine sitting in a social-work class at a Catholic university, discussing whether Catholic adoption agencies should place children for adoption with same-sex couples. And the professor promotes a religious view opposite to the one held by the university. Is this professor performing ministerial functions? Not in Massachusetts. But probably in Indiana. This Court should correct that error.

**IV. This Court should grant the petition and hold that courts cannot second guess a religious organization's good-faith belief about who is performing a ministerial function.**

In *Our Lady of Guadalupe*, Justice Thomas, joined by Justice Gorsuch, wrote separately on a question the Court reserved: the amount of deference owed to a religious organization's own views about which of its employees is a minister. Justice Thomas "reiterate[d his] view that the Religious Clauses require civil courts to defer to religious organizations' good faith-claims that a certain employee's position is ministerial." 140 S. Ct. at 2069–70 (Thomas, J., concurring) (citing *Hosanna-Tabor*, 565 U.S. at 196 (Thomas, J., concurring)).

As the majority observed there, judges lack the necessary "understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." 140 S. Ct. at 2066. And "[w]hat qualifies as 'ministerial' is an inherently

theological question, and thus one that cannot be resolved by civil courts through legal analysis.” *Id.* at 2070 (Thomas, J. concurring) (citing *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring)). When courts defer to that theological judgment, “they heed the First Amendment, which ‘commands civil courts to decide [legal] disputes without resolving underlying controversies over religious doctrine.’” *Ibid.* (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hall Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969)).

In *Our Lady of Guadalupe*, this Court “properly decline[d] to consider whether an employee shares the religious organization’s beliefs when determining whether that employee’s position falls within the ‘ministerial exception’” because to do so “would risk judicial entanglement in religious issues.” 140 S. Ct. at 2070 (Thomas, J., concurring). “But the same can be said about the broader inquiry whether an employee’s position is ‘ministerial.’” *Ibid.* “This Court usually goes to great lengths to avoid governmental ‘entanglement’ with religion, particularly in its Establishment Clause cases.” *Ibid.* (citing *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971)). That is because “the Religion Clauses do not permit governmental ‘interfer[ence] with ... a religious group’s right to shape its own faith and mission through its appointments.” *Id.* at 2071 (quoting *Hosanna-Tabor*, 565 U.S. at 188). “To avoid such interference, [this Court] should defer to [religious organizations]’ good-faith understandings of which individuals are charged with carrying out the organizations’ religious missions.” *Ibid.*

**V. This case is an ideal vehicle with which to answer the questions presented.**

This case is an excellent vehicle to decide the questions presented. Two factors highlight this. *First*, the record cleanly frames the question presented. The trial court denied the College’s summary-judgment motion and granted Deweese-Boyd’s on whether the ministerial exception applies. App.103a. The factual record was clean enough, and the legal question important enough, that the trial court allowed the College to seek direct appellate review—even though other issues remained for trial. And the Massachusetts Supreme Judicial Court granted review because the critical fact underlying the legal question here “is undisputed”: Gordon College required Deweese-Boyd to integrate “the Christian faith” into her teaching and “scholarship”. App.25a. The only question is purely legal: whether that “responsibility” to integrate her faith and work makes Deweese-Boyd a minister. *Ibid*.

*Second*, the issues presented will not benefit from further percolation. Over 7,000 U.S. colleges and universities identify as “religious.”<sup>9</sup> Religious colleges need urgent clarity on whether the ministerial exception protects their decisions about professors who inculcate the faith. Not all have a faith-integration requirement. But those that do need this Court’s assurance that the ministerial exception covers their faculty. Colleges like Gordon should not be forced to choose between violating the law or shutting down and dispersing their assets. They need clarity. Now.

---

<sup>9</sup> <https://perma.cc/VL7N-5XWN>.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

KRISTEN K. WAGGONER  
JOHN J. BURSCH  
*Counsel of Record*  
ERIN MORROW HAWLEY  
ALLIANCE DEFENDING FREEDOM  
440 First Street NW  
Suite 600  
Washington, DC 20001  
(616) 450-4235  
jbursch@ADFlegal.org

ASHLEY B. ABEL  
BENJAMIN R. DAVIS  
JACKSON LEWIS P.C.  
75 Park Plaza, 4th Floor  
Boston, MA 02116  
(617) 367-0025

AUGUST 2021

## **APPENDIX**

**APPENDIX TABLE OF CONTENTS**

Supreme Judicial Court of Massachusetts  
Opinion  
March 5, 2021 ..... 1a

Superior Court of Massachusetts  
Memorandum of Decision and Order on  
Summary Judgment  
April 2, 2020 ..... 37a

Memo from Faculty Senate to DeWeese-Boyd  
dated December 16, 2016..... 104a

Letter from Provost Curry to DeWeese-Boyd  
dated February 8, 2017..... 108a

Excerpts from Amended Consolidated  
Statement of Undisputed Material Facts ..... 112a

Excerpts from Gordon College Bylaws..... 133a

Excerpts from Gordon College Restated  
Articles of Organization..... 135a

Supreme Judicial Court of Massachusetts, Essex.  
No. SJC-12988

---

MARGARET DeWEESE-BOYD

v.

GORDON COLLEGE & others.<sup>1</sup>

---

OPINION

KAFKER, J. This case requires us to assess, in light of the recent United States Supreme Court decision in Our Lady of Guadalupe Sch. v. Morrissey-Berru, — U.S. —, 140 S. Ct. 2049 (2020) (Our Lady of Guadalupe), whether the ministerial exception applies to an associate professor of social work at a private Christian liberal arts college. When the ministerial exception applies, the employee may not claim important protections of civil law prohibiting discrimination on the basis of any protected factor, such as race, religion, national origin, sex, or sexual orientation. Such exceptional treatment is deemed necessary to protect our religious institutions against interference by civil authorities in the selection of those who minister to their faithful. We are thus presented with a potential conflict between two fundamental American legal principles. The application of the ministerial exception could eclipse, and thereby eliminate, civil law protection against discrimination within a religious institution; in contrast, the decision not to

---

<sup>1</sup> Dr. Michael Lindsay and Janel Curry.

apply the exception could allow civil authorities to interfere with who is chosen to propagate religious doctrine, a violation of our country's historic understanding of the separation of church and State set out in the First Amendment to the United States Constitution. Unfortunately, the parameters of the exception -- that is to say, who is covered by the ministerial exception -- remain somewhat unclear.

We conclude that Gordon College (Gordon) is a religious institution, but that the plaintiff, Margaret DeWeese-Boyd, is not a ministerial employee. Her duties as an associate professor of social work differ significantly from cases where the ministerial exception has been applied, as she did not teach religion or religious texts, lead her students in prayer, take students to chapel services or other religious services, deliver sermons at chapel services, or select liturgy, all of which have been important, albeit not dispositive, factors in the Supreme Court's functional analysis. The most difficult issue for us is how to evaluate her responsibility to integrate her Christian faith into her teaching and scholarship as a professor of social work.

The Supreme Court has not specifically addressed the significance of the responsibility to integrate religious faith into instruction and scholarship that would otherwise not be considered ministerial. If this integration responsibility is sufficient to render a teacher a minister within the meaning of the exception, the ministerial exception would be significantly expanded beyond those employees currently identified as ministerial by the Supreme Court. The number of employees playing key ministerial roles in religious institutions would be

greatly increased. In fact, Gordon has recently attempted to describe all of its faculty, and even all of its employees, as ministers, over the objection of the faculty itself. It is our understanding that the ministerial exception defined by the Supreme Court is more circumscribed.<sup>2</sup>

1. Procedural history. In September 2017, DeWeese-Boyd, a tenured associate professor of social work at Gordon, commenced a civil action against Gordon and its president (D. Michael Lindsay) and provost (Janel Curry). She alleged in her complaint that the defendants 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 others (LGBTQ+persons), by denying her application for promotion to full professor, despite the fact that the faculty senate

---

<sup>2</sup> We acknowledge the amicus briefs submitted by the Roman Catholic Archdiocese of Boston; by Jewish Coalition for Religious Liberty and Agudath Israel of America; by the Attorney General; by Jewish Alliance for Law and Social Action, Clergy and Laity United for Economic Justice, Keshet, National Council of Jewish Women, New England Jewish Labor Committee, Truah: the Rabbinic Call for Human Rights, and Unitarian Universalist Massachusetts Action Network; by the Charles Hamilton Houston Institute for Race and Justice, GLBTQ Legal Advocates & Defenders, Lawyers for Civil Rights, Massachusetts Employment Lawyers Association, National Association of Social Workers, and Union of Minority Neighborhoods; by American Association of University Professors; by the Council for Christian Colleges and Universities and forty-six individual religious colleges and universities; by American Civil Liberties Union of Massachusetts, Inc.; and by four religious liberty scholars.

unanimously recommended her for the promotion. Specifically, she alleged unlawful retaliation in violation of G. L. c. 151B, § 9; unlawful discrimination on the basis of her association with LGBTQ+ persons or on the basis of her gender in violation of G. L. c. 151B, § 9; as to the individual defendants, aiding and abetting discriminatory and retaliatory acts and interference with her rights in violation of G. L. c. 151B, § 4; violation of the Massachusetts Civil Rights Act (MCRA), G. L. c. 12, §§ 11H, 11I; breach of contract; breach of the implied covenant of good faith and fair dealing; and tortious interference with contractual or advantageous relations.

The parties cross-moved for summary judgment on the question whether the ministerial exception, which prohibits government interference with employment relationships between religious institutions and their ministerial employees, barred the plaintiff's claims. See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Employment Opportunity Comm'n, 565 U.S. 171, 188-189 (2012) (Hosanna-Tabor). On April 3, 2020, a Superior Court judge allowed the plaintiff's motion and denied the defendants' motion, concluding that Gordon is a religious institution but DeWeese-Boyd was not a ministerial employee. On April 24, 2020, the same judge granted the defendants' motion to report to the Appeals Court the question whether the dismissal of the defendants' summary judgment motion was error.<sup>3</sup> We subsequently allowed Gordon's application for direct appellate review.

---

<sup>3</sup> The reported question asks: "Did the [c]ourt err in dismissing on summary judgement the affirmative defense of the

2. Factual background. a. Gordon. i. History and guiding principles. Gordon is a private, non-denominational Christian liberal arts college in Wenham.<sup>4</sup> It was chartered by the Commonwealth in 1889 “for the purpose of carrying on the educational work begun . . . by the Reverend Adoniram Judson Gordon.”<sup>5</sup> Its mission is “to graduate men and women distinguished by intellectual maturity and Christian character, committed to lives of service and prepared for leadership worldwide.” Gordon’s bylaws state that Gordon is dedicated to both “[t]he historic, evangelical, biblical faith” and “[e]ducation, not indoctrination.”

Gordon’s Administrative/Faculty Handbook (handbook) indicates that it is “a Christian community, distinguished from other Christian communities by its primary commitment to provide a liberal arts education.” Community members, including faculty, must affirm Gordon’s Statement of Faith and agree to abide by the behavioral standards in Gordon’s Statement on Life and Conduct. Each undergraduate must be able to describe their faith and must complete Gordon’s core curriculum, which “explores the liberal arts and sciences from a

---

ministerial exception which was recognized by the United States Supreme Court for the first time in [Hosanna-Tabor, 565 U.S. at 188-190]?”

<sup>4</sup> Gordon is distinct from Gordon-Conwell Theological Seminary, which was formed after Gordon’s divinity school separated from Gordon in 1970.

<sup>5</sup> Except where otherwise noted, quotations are taken from Gordon’s Administrative/Faculty Handbook (handbook) and other official Gordon materials.

Christian perspective.”<sup>6</sup> Lindsay testified, “[A]t Gordon there are no nonsacred disciplines. . . . Every subject matter that we pursue is informed by, shaped by, the Christian tradition.”

ii. Social work department.<sup>7</sup> The Gordon social work program’s mission was “the education of men and women for entry level, generalist practice in social work within the context of a Christian liberal arts institution.” The program’s four stated goals were the “integration and application of social work and Christian values,” the “understanding and application of a generalist model of social work practice,” the “promotion of social and economic justice,” and the “preparation of students who achieve professional competence.”

iii. Faculty. A. Faculty responsibilities and tenure evaluation. In the section, “Responsibilities of Faculty,” Gordon’s handbook states:

“Faculty members at Gordon College are teacher-scholars. As an undergraduate liberal arts institution, Gordon values faculty who are distinguished by excellence in teaching, commitment to mentoring and advising students, and service to the College. Teaching and service also need to be continually enriched and informed by an active scholarly life. . . . To prepare students in an academic discipline, Gordon faculty need to be sound practitioners of that discipline,

---

<sup>6</sup> The core curriculum includes courses in biblical studies, science, history, languages, philosophy, and physical education.

<sup>7</sup> Gordon eliminated the social work major in 2019, while this case was pending.

adding to and applying the knowledge within their respective fields of study. Furthermore, Gordon faculty members need to be interpreters of their disciplines. Not only should faculty be able to explain current methodologies and theories of their disciplines to their students and colleagues, but they should continually explore how a Christian worldview enhances, redefines, or confronts their discipline's preeminent practices and philosophical assumptions."

Gordon faculty are described in the handbook as "members of a community of Christian scholars," and as "committed to imaging Christ in all aspects of their educational endeavors." The handbook is clear that Gordon's Christian perspective does not limit academic freedom, "but rather provide[s] an integrative approach to [the community's] scholarly endeavors."

The handbook divides professors' basic responsibilities -- and the bases on which tenure and promotions are evaluated -- into three categories: teaching, scholarly and professional activity, and institutional service.

In their role as teachers, faculty effectiveness is evaluated in five areas: (1) self-understanding; (2) course design and content; (3) presentation; (4) sensitivity to student needs, and (5) integration, in which the faculty member

- a. “cultivates a sense that ‘knowing’ is a matter not just of the intellect, but also of faith, praxis,<sup>[8]</sup> and intuitive insight”;
- b. “encourages students to uncover, question, and reflect on their tacit assumptions about their world”;
- c. “helps students to make inter-curricular connections”;
- d. “helps students make connections between course content, Christian thought and principles, and personal faith and practice”; and
- e. “encourages students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection.”

In their role as scholars, faculty are expected to “promote understanding of their disciplines from the perspectives of the Christian faith and to engage in scholarship, professional participation, and dissemination of research and creative work appropriate to their disciplines.” The handbook notes that scholarship at Gordon can be “integrative scholarship that develops Christian perspectives,” but can also take other forms (specifically, disciplinary, interdisciplinary, or practical scholarship).

To satisfy their institutional service responsibilities, faculty are expected to serve in a variety of capacities, such as attending faculty

---

<sup>8</sup> In a religious or philosophical context, “praxis” often means “action which arises from true belief, the manifestation of religion in practice.” J. Bowker, *The Concise Oxford Dictionary of World Religions* (2016).

meetings and serving on departmental committees, “guided by a concern to further the mission of Gordon.”

As faculty members progress through the promotion and tenure processes, they are required to detail how they integrate faith and learning, including submitting an “integration paper” at the end of their third year of appointment. The faculty senate is responsible for making recommendations on applications for promotion and tenure.

Curry, Gordon’s provost, testified that faculty are not required to participate in leading prayers or to attend regular chapel services on campus. The handbook does not contain any specific reference to faculty responsibility for leading prayers.<sup>9</sup>

Lindsay, who became president of Gordon after DeWeese-Boyd was hired, testified that when he interviews a faculty member, he “will liken joining Gordon College to joining a religious order.”<sup>10</sup> Formal religious training is not, however, required for employment at Gordon, although some professors have seminary degrees. Professors with seminary

---

<sup>9</sup> Lindsay testified that leading students in prayer “would be an expectation of the job” of faculty “that I think would be communicated in the various opportunities we provide throughout the year and in the norms and expectations we have on the campus,” but he provided no specific reference to what those norms and expectations are or how they are communicated other than the handbook.

<sup>10</sup> There is no evidence in the record indicating whether such a statement was made to DeWeese-Boyd.

training do not have different titles from other professors.

B. Addition of “minister” to the handbook. In October 2016, Gordon added the following language to the handbook:

“One of the distinctives of Gordon College is that each member of faculty is expected to participate actively in the spiritual formation of our students into godly, biblically-faithful ambassadors for Christ. Faculty members should seek to engage our students in meaningful ways to strengthen them in their faith walks with Christ. In the Gordon College context, faculty members are both educators and ministers to our students.”

This language was drafted by Meirwyn Walters, Gordon’s counsel. The handbook did not previously use the term “minister” to describe faculty. Faculty were not informed of this change to the handbook. After they discovered the language, it was discussed at a faculty meeting in the fall of 2017, the minutes of which state:

“The language was composed by Meirwyn, and not the administration for legal reasons. This was due to cultural shifts relating to religious liberty to ‘shore up’ our governing documents. This allows us to trigger judicial deference to protect our First Amendment rights. . . In his opinion, this statement does not add anything new to faculty responsibilities.”<sup>11</sup>

---

<sup>11</sup> Walters testified that the language “wasn’t a change, it was an addition of language that captured what the school had

Multiple professors stated in affidavits that there was “serious opposition” to the addition of this language, in large part due to concerns that it was inaccurate, misleading, and “a significant departure from [both] the faculty’s own sense of their responsibilities and calling at Gordon” and “Gordon’s long-standing ethos.” The Gordon chapter of the American Association of University Professors issued the following formal statement in response to the addition:

“We respectfully disagree with the designation of faculty as ‘Ministers’ in the most recent version of the Faculty Handbook. . . . Adopting the language of ‘Minister’ in a presumed attempt to bring faculty within the scope of the Ministerial Exception at best effects a mere change of label while wrongly describing the faculty role within the College. Attempting to shoehorn faculty into this employment category is at odds with our desire to live in a distinctive Christian community as ‘Teacher-Scholars.’”

b. DeWeese-Boyd. i. Employment and promotion history. Gordon hired DeWeese-Boyd as an assistant professor in 1998. Prior to her employment at Gordon, DeWeese-Boyd worked in the mission field; received a master of arts degree in general theological studies from Covenant Theological Seminary and a master of social work degree from Washington University, both in St. Louis, Missouri; and was pursuing a doctoral degree in political science from the University of

---

been doing historically and its expectations of faculty.” Lindsay testified that this language was an attempt to “memorialize what the expectations were of our faculty.”

Missouri at St. Louis and a doctoral degree in social work from Washington University.<sup>12</sup> She highlighted all of these experiences in her cover letter for a tenure-track position at Gordon.

She also submitted a curriculum vitae, a statement regarding her educational philosophy, and an application detailing her personal faith, its impact on her scholarship, and her view of faculty responsibilities in a Christian higher education institution. In these documents, she listed her teaching areas as “social policy; research methods; values and ethics; the policy process; political thought; [and] community development practice and theory.” She also made statements regarding faith and her profession, specifically: “Christians have an undeniable call to minister to others”; “[m]y Christian commitment affects my scholarship by allowing me to see my work as participation in the reform of human society”; and “it is . . . the role of the Christian academic to guide and mentor each student in such a way as to help her to discern how Christianity impacts upon her particular discipline.”

In 2002, DeWeese-Boyd submitted a book review as her third-year integration paper. The paper reviewed two books, titled, “The Paradox of Natural Mothering” and “The Price of Motherhood: Why the Most Important Job in the World Is Still the Least Valued.” Describing the paper, DeWeese-Boyd wrote: “[W]hat I have submitted is a piece of my work that

---

<sup>12</sup> DeWeese-Boyd completed her doctoral degree in political science shortly after she was officially hired. She later completed all but her dissertation in pursuit of the doctoral degree in social work.

reflects my understanding of integration. In other words, I have simply submitted a piece of my work as a Christian scholar. It is work that I believe to be inherently integrated.” She described the paper as integrative scholarship that brings “disciplinary insights to a wider Christian audience,” as opposed to “integrative scholarship [that brings] a decidedly Christian perspective to bear on a disciplinary manner,” which her paper was not.

DeWeese-Boyd was promoted to associate professor in 2004 and approved for tenure in 2009.<sup>13</sup> In 2016, she applied for a promotion to full professor. Her curriculum vitae accompanying her application detailed her work in development of the social work program,<sup>14</sup> professional memberships, and scholarly publications on primarily secular topics. She also submitted a self-evaluation, in which she reflected on her teaching, scholarly work, and institutional service.

The faculty senate unanimously recommended her for the promotion, noting her teaching effectiveness, contributions to scholarship, and

---

<sup>13</sup> For her tenure application, she initially submitted a paper on land use and development. The provost and faculty senate asked her to be more explicit in her understanding of integration, and she then submitted a different paper, “Reflections on Christian Scholarship,” for consideration for tenure.

<sup>14</sup> DeWeese-Boyd’s curricular contributions included increasing the statistics requirements to provide students “with a fuller background in social scientific methods and research,” introducing a course on community and sustainability, creating and coordinating a sustainable development minor, and serving as the social work practicum director.

leadership as director of the social work practicum. In 2017, Curry and Lindsay decided not to forward that recommendation to the board of trustees, citing a lack of scholarly productivity, professionalism, responsiveness, and engagement. The letter from Curry detailing the decision did not include any reference to religious or ministerial matters or theological disagreement.<sup>15</sup>

ii. General role at Gordon. The terms of DeWeese-Boyd's contracts<sup>16</sup> state that Gordon employed her as teaching faculty and that her responsibilities were governed by the handbook "as that may be amended from time to time . . . including subscribing to the Statement of Faith and the Life and Conduct Statement." Apart from the reference to the handbook, the contracts do not explicitly provide for any spiritual responsibilities.

DeWeese-Boyd is not ordained by any church body or denomination, nor was she ever formally commissioned or ordained as a minister for Gordon.<sup>17</sup> She was never required to complete education or professional development regarding ministerial responsibilities.<sup>18</sup> She never viewed herself or held

---

<sup>15</sup> DeWeese-Boyd's position was terminated when the social work major was cut in 2019, while this case was pending.

<sup>16</sup> DeWeese-Boyd submitted her contracts for the academic years 1998-1999 and 2017-2018 to the court.

<sup>17</sup> Although Gordon now holds a "Vision Day" for new faculty, which includes prayer and commissioning, Vision Day did not exist when DeWeese-Boyd was hired and she did not participate in any such commissioning.

<sup>18</sup> Gordon now conducts seminars concerning the integration of faith and learning to assist second-year faculty in

herself out as a minister for Gordon, nor did she understand her job to include responsibility for encouraging students to participate in religious life or leading them in spiritual exercises. She did not teach religion or biblical studies to students, take students to religious services at Gordon, lead or select content for chapel services at Gordon, conduct Bible studies at Gordon, or preach at Gordon. She attended Gordon chapel services approximately twice per year.

3. Discussion. a. Ministerial exception. In Hosanna-Tabor, Chief Justice Roberts, writing for the Court, provided a historical explanation of the ministerial exception and how it arose out of the English experience of the Crown imposing its will on the selection of ecclesiastic offices and the colonists' decision to cross the ocean and free themselves "to elect their own ministers and establish their own modes of worship." Hosanna-Tabor, 565 U.S. at 182. As the Chief Justice further explained,

"The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right

---

writing their third-year integration paper, but Gordon did not conduct those seminars when DeWeese-Boyd was a second-year faculty, and she never attended such a seminar.

to shape its own faith and mission through its appointments. According to the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.”

Id. at 188-189.

The Supreme Court also recognized the significant consequences of the ministerial exception. Building on a line of lower court cases, the Court held that this principle provides an affirmative defense available to religious institutions, barring employment discrimination claims against such an institution by one of its ministers. Hosanna-Tabor, 565 U.S. at 188, 195 n.4. The facts of the various cases before the Supreme Court emphasize the serious consequences of the exception. One of the plaintiffs in Our Lady of Guadalupe alleged that she was terminated because of her age. Our Lady of Guadalupe, 140 S. Ct. at 2057-2058. Another plaintiff claimed that she was terminated because she sought treatment for breast cancer. Id. at 2059. In the instant case, the plaintiff contends that she was terminated on the basis of her association with LGBTQ+ persons or on the basis of her gender in violation of G. L. c. 151B. If the ministerial exception applies, even if such allegations are true, the religious institution will be free to discriminate on those bases. The same would be true for racial discrimination or discrimination on the basis of national origin.

The potential for conflict between these fundamental legal principles is therefore obvious and of great concern, not only to the individual plaintiffs,

but also for our civil society and religious institutions. While “the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission” is an undoubtedly important First Amendment right, so, too, is “[t]he interest of society in the enforcement of employment discrimination statutes.” Hosanna-Tabor, 565 U.S. at 196. See Bostock v. Clayton County, Ga., 140 S. Ct. 1731, 1737 (2020) (“In our time, few pieces of federal legislation rank in significance” with legislation outlawing “discrimination in the workplace on the basis of race, color, religion, sex, or national origin”); Roberts v. United States Jaycees, 468 U.S. 609, 624 (1984) (eliminating discrimination “plainly serves compelling state interests of the highest order”); Flagg v. AliMed, Inc., 466 Mass. 23, 29 (2013) (“the Legislature determined that workplace discrimination harmed not only the targeted individuals but the entire social fabric”).

Despite the high stakes, the difficult issue is not at this point whether the ministerial exception should be created -- it is well established, Williams v. Episcopal Diocese of Mass., 436 Mass. 574, 579 (2002) -- or whether it should eclipse and thereby eliminate civil law protection against discrimination -- it clearly does. Rather, the difficult issue is who is a minister. We will return to this issue and address it in detail after considering the threshold question, which is whether Gordon is a religious institution. If Gordon is not a religious institution, as DeWeese-Boyd contends, a professor of social work at the institution is certainly not covered by the ministerial exception.

b. Application to the present case. i. Standard of review. We review summary judgment decisions de

novo. Dorchester Mut. Ins. Co. v. Krusell, 485 Mass. 431, 435 (2020). “The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law.” Id., quoting Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). We consider the record as a whole and need not rely on the same reasoning as the Superior Court judge. Lynch v. Crawford, 483 Mass. 631, 641 (2019).

The employer who asserts the ministerial exception as an affirmative defense has the burden of proving it. Hosanna-Tabor, 565 U.S. at 195 n.4, (ministerial exception is affirmative defense). See, e.g., Dixon v. United States, 548 U.S. 1, 2 (2006) (noting long-established common-law rule that “the one relying on an affirmative defense must set it up and establish it”).

ii. Religious institution.<sup>19</sup> The Supreme Court has not directly addressed what constitutes a religious institution for purposes of the ministerial exception other than a traditional church or organized sect. See Our Lady of Guadalupe, 140 S. Ct. at 2056 n.3 (plaintiff teachers at Roman Catholic primary school employed directly by archdiocese); Hosanna-Tabor,

---

<sup>19</sup> The defendants argue that the question whether Gordon is a religious institution is not properly before this court given that neither party appealed from the judge’s ruling that Gordon is a religious institution. However, the reported question -- whether the judge erred in applying the ministerial exception affirmative defense -- requires a conclusion as to whether Gordon is a religious institution.

565 U.S. at 177 (defendant “member congregation” of Missouri synod was both church and school). Federal circuit courts have concluded that to invoke the exception, an employer need not be a traditional religious organization, so long as its “mission is marked by clear or obvious religious characteristics.” Conlon v. InterVarsity Christian Fellowship/USA, 777 F.3d 829, 831, 834 (6th Cir. 2015), quoting Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 310 (4th Cir. 2004) (concluding that campus ministry whose purpose “is to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord: growing in love for God, God’s Word, God’s people of every ethnicity and culture and God’s purposes in the world” is religious institution). See Shaliehsabou, *supra* at 310-311 (concluding that home whose mission “is to provide elder care to ‘aged of the Jewish faith in accordance with the precepts of Jewish law and customs’” is religious institution). We agree that this is the appropriate test and further conclude that Gordon satisfies these requirements.

Although the inquiry is particularly straightforward when addressing churches, temples, mosques, or religious schools affiliated with particular denominations, religious institutions are not so limited. Gordon’s nondenominational nature does not preclude a finding that it is a religious institution. As the United States Court of Appeals for the Sixth Circuit explained in Conlon:

“[T]he ministerial exception’s applicability does not turn on its being tied to a specific denominational faith; it applies to multid denominational and nondenominational religious organizations

as well. . . . [I]n order to invoke the exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization” (quotation and citation omitted).

Conlon, 777 F.3d at 834. The Sixth Circuit concluded that InterVarsity Christian Fellowship/USA (InterVarsity), “with not only its Christian name, but its mission of Christian ministry and teaching,” clearly fit the definition of a religious institution despite its lack of denominational affiliation or hierarchy. Id. Like InterVarsity, Gordon has a clear commitment to Christian principles, as well as historical religious roots.

DeWeese-Boyd also argues that because Gordon’s “primary commitment” is to provide a liberal arts education, it is not a religious institution. There is, however, no primary purpose requirement. Gordon identifies as both a Christian college and a liberal arts college, as the portion of the handbook the plaintiff quotes makes clear: Gordon is “a Christian community, distinguished from other Christian communities by its primary commitment to provide a liberal arts education.” The existence of one purpose does not negate the other where Gordon’s mission remains undoubtedly “marked by clear or obvious religious characteristics.” Shaliefsabou, 363 F.3d at 310. All of Gordon’s governing documents reference religious purposes, and all members of the Gordon community, including its faculty, are expected to articulate and affirm their faith and abide by faith-based behavioral standards. Upon review of the abundant record concerning Gordon’s obvious

religious character, we conclude that it is a religious institution.

iii. Ministerial employee. We now turn to the primary issue in this case: who is covered by the ministerial exception. We look to the two recent ministerial exception decisions issued by the Supreme Court, Hosanna-Tabor and Our Lady of Guadalupe, focusing first on the facts and the specific holdings. In Hosanna-Tabor, the Supreme Court stated:

“Every Court of Appeals to have considered the question has concluded that the ministerial exception is not limited to the head of a religious congregation, and we agree. We are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us to conclude, in this our first case involving the ministerial exception, that the exception covers [the plaintiff], given all the circumstances of her employment.”

Hosanna-Tabor, 565 U.S. at 190.

More specifically, Hosanna-Tabor involved an Evangelical Lutheran church and school. Hosanna-Tabor, 565 U.S. at 177. Cheryl Perich was a “called” teacher, who had undergone formal religious training and accepted a formal call to religious service. Id. at 178, 191-192. Both Perich and her employer viewed her as a minister, and her employer commissioned, reviewed, and referred to her as such. Id. at 191-192. Her formal title was “Minister of Religion, Commissioned.” Id. at 191. Her job duties included “lead[ing] others toward Christian maturity” and “teach[ing] faithfully the Word of God,” and to this end she taught her students religion, led them in

prayer three times a day, took them to chapel, and occasionally led the chapel service. Id. at 192. She also claimed a special housing allowance on her taxes that was available only to employees earning their compensation “in the exercise of the ministry.” Id. at 191-192. In concluding that Perich was a ministerial employee, the Court focused on “the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church.” Id. at 192.

Our Lady of Guadalupe involved two teachers at Roman Catholic primary schools, Agnes Morrissey-Berru and Kristen Biel, who brought actions against their employers after demotion and discharge. Our Lady of Guadalupe, 140 S. Ct. at 2056-2059. The Court recognized the vital importance of education in the faith to many religions and applied that understanding to their analysis, concluding that the teachers were ministers:

“As elementary school teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith. And not only were they obligated to provide instruction about the Catholic faith, but they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith. They prayed with their students, attended Mass with the students, and prepared the children for their participation in other religious activities. Their positions did not have all the attributes of

Perich’s. Their titles did not include the term ‘minister,’ and they had less formal religious training, but their core responsibilities as teachers of religion were essentially the same. And both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the schools’ definition and explanation of their roles is important.”

Id. at 2066.

In determining who is a minister, the Court in Our Lady of Guadalupe emphasized a functional analysis:

“What matters, at bottom, is what an employee does. And implicit in our decision in Hosanna-Tabor was a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school. As we put it, Perich had been entrusted with the responsibility of ‘transmitting the Lutheran faith to the next generation.’ One of the concurrences made the same point, concluding that the exception should include ‘any “employee” who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.’” (Citations omitted.)

Id. at 2064. The Court stressed that in making the determination whether someone is a ministerial employee, it must “take all relevant circumstances into account and . . . determine whether each particular position implicated the fundamental purpose of the exception.” Id. at 2067.

We begin, as Our Lady of Guadalupe instructs, with what DeWeese-Boyd did, and what she did not do. She was, first and foremost, a professor of social work. She taught classes on sustainability and general social work practice and oversaw practicums. DeWeese-Boyd was not required to, and did not, teach classes on religion, pray with her students, or attend chapel with her students, like the plaintiffs in Our Lady of Guadalupe, 140 S. Ct. at 2066, nor did she lead students in devotional exercises or lead chapel services, like the plaintiff in Hosanna-Tabor, 565 U.S. at 192. We consider this a significant difference.

DeWeese-Boyd was, however, required to, and did, both engage in teaching and scholarship from a Christian perspective and integrate her faith into her work.<sup>20</sup> The handbook defines this faculty duty, variously, as “continually explor[ing] how a Christian worldview enhances, redefines, or confronts their discipline’s preeminent practices and philosophical assumptions”; “promot[ing] understanding of their disciplines from the perspectives of the Christian faith”; “help[ing] students make connections between course content, Christian thought and principles, and

---

<sup>20</sup> The concept of integrating faith and learning in higher education is, of course, not unique to Gordon. See, e.g., Hasker, Faith-Learning Integration: An Overview, *Christian Scholar’s Rev.*, vol. 21, No. 3, Mar. 1992, at 234; Smith, Liberty University, Faculty Publications and Presentations, *The Integration of Faith and Learning: Perspectives on the Librarian’s Role* (June 2004), [https://digitalcommons.liberty.edu/lib\\_fac\\_pubs/2](https://digitalcommons.liberty.edu/lib_fac_pubs/2) [<https://perma.cc/VPE8-4TMQ>]. Because we are sensitive to the judiciary’s necessarily limited understanding of any religious underpinnings of the concept of integration, we rely on the handbook to illuminate DeWeese-Boyd’s duties in this respect.

personal faith and practice”; and “encourag[ing] students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection.” The social work curriculum “is informed by a Christian understanding of individuals, communities, and societies,” and seeks the “integration and application of social work and Christian values” and to “[e]mphasize the Christian liberal arts foundation and perspective.” DeWeese-Boyd recognized this duty by submitting scholarship on secular topics, teaching students about connections between course material and the Christian faith, and reflecting on the role of Christian scholarship in the “decidedly nonsectarian” field of social work in the “struggle against flawed social, political and economic structures.”<sup>21</sup> It is undisputed that this integrative responsibility was part of her duty and function as a social work professor at a nondenominational religious institution.

We also recognize that the integrative responsibility was an important aspect of being a professor at Gordon. Curry and Lindsay referenced Gordon’s history, mission, and tradition of integrating faith into education when asked about religious requirements for faculty, even likening joining Gordon to responding to a formal call to religious service. Both individual defendants testified to the effect that Gordon’s nature makes every faculty member, and likely every employee, ministerial. Janitorial and kitchen staff, according to the defendants, are ministerial because they “befriend[ ]

---

<sup>21</sup> This language is drawn from DeWeese-Boyd’s tenure paper.

students,” “model[ ] Christ-like behavior,” and “nurtur[e] the students’ faith commitments and maturity.”

Less clear is whether DeWeese-Boyd was required to take on the role of a spiritual mentor for her students beyond her duties of integrating a Christian perspective into her teaching and scholarship. The recently revised handbook describes a faculty duty to “participate actively in the spiritual formation of our students into godly, biblically-faithful ambassadors for Christ” and to “seek to engage our students in meaningful ways to strengthen them in their faith walks with Christ.” Even applying this language -- added eighteen years into her employment -- to DeWeese-Boyd, there are nonetheless no formal requirements to meet with students for spiritual guidance, pray with students, directly teach them doctrine, or participate in religious rituals or services with them, but rather a general exhortation for faculty “to be fully prepared in all facets of their tasks as Christian teachers and advisors, both inside and outside the classroom.”

The individual defendants have testified to the effect that taking on the role of a spiritual mentor or advisor is “part and parcel” of what it means to be faculty at a Christian college. While it may be true that Gordon employs Christians, and “Christians have an undeniable call to minister to others,” this line of argument appears to oversimplify the Supreme Court test, suggesting that all Christians teaching at all Christian schools and colleges are necessarily ministers. If this were the case, the Court could have simply said so and not developed the two-prong test and functional analysis laid out in Our Lady of

Guadalupe. For this reason, we focus on the handbook's detailed expectations of faculty to understand the nature and extent of DeWeese-Boyd's duties.

In particular, we focus on DeWeese-Boyd's responsibility to integrate the Christian faith into her teaching, scholarship, and advising at a non-denominational Christian college, and whether this rendered her a minister when she did not teach religion, the Bible, or religious doctrine; did not lead her students in devotional exercises or chapel services; and was not required to pray or attend chapel with her students. In Hosanna-Tabor and Our Lady of Guadalupe, the religious instruction was specific and sectarian, and the teachers led prayers and religious rituals. These traditional ministerial acts informed, or at least provided context for, the Court's more general statements about "educating young people in their faith, inculcating its teachings, and training them to live their faith." Our Lady of Guadalupe, 140 S. Ct. at 2064.

Here, the integrative function is not tied to a sectarian curriculum: it does not involve teaching any prescribed religious doctrine, or leading students in prayer or religious ritual. Yet it does involve integrating the Christian faith generally into teaching and writing about social work. Whether this more general religious reflection was meant to be included in the Supreme Court's statement about "educating young people in their faith," and is enough to render her a minister, is not directly answered by precedent. Id.

We do not find DeWeese-Boyd's title or training to provide decisive insight into resolving the difficult question whether she was a minister. More specifically, DeWeese-Boyd's formal title, "associate professor of social work," does not indicate any religious position. The revised handbook does describe all faculty not only as educators, but also as ministers; that paragraph was, however, added to the handbook in October 2016 -- eighteen years after DeWeese-Boyd was hired, and just two months before she was unanimously recommended for promotion to full professor. All that being said, "[s]imply giving an employee the title of 'minister' is not enough to justify the exception." Our Lady of Guadalupe, 140 S. Ct. at 2063. "A religious institution's explanation of the role of such employees in the life of the religion in question is important," id. at 2066, but the Court has not adopted the position of two of its concurring justices that we must accept Gordon's view as binding where there is disagreement, see id. at 2069-2070 (Thomas, J., concurring, with whom Gorsuch, J., joined) (expressing view that courts should "defer to religious organizations' good-faith claims that a certain employee's position is 'ministerial'"); Hosanna-Tabor, 565 U.S. at 196 (Thomas, J., concurring) (same). See also Sterlinski v. Catholic Bishop of Chicago, 934 F.3d 568, 571 (7th Cir. 2019) (courts are competent in "separating pretextual justifications from honest ones," and church's claim that organist was minister "reflects a longstanding tradition; it is not an explanation hoked up for the occasion"); Grussgott v. Milwaukee Jewish Day Sch., Inc., 882 F.3d 655, 660 (7th Cir.), cert. denied, 139 S. Ct. 456 (2018) (deferring to organization on question of distinction

between secular and religious organization “where there is no sign of subterfuge”).

In this instance, the label is uninformative, not only because it was added so late in DeWeese-Boyd’s tenure, but also because there is abundant evidence in the record of what was required and expected of Gordon faculty during her employment there and our focus, as the Supreme Court has directed, is on function. Rather than rely on this late labeling of DeWeese-Boyd’s position, we return again to the functional analysis recommended in Our Lady of Guadalupe. She was a teacher of social work, expected and required to integrate the Christian faith into her teaching, scholarship, and advising.

Like her title, DeWeese-Boyd’s training provides some guidance, but is not dispositive as to any ministerial status. On the one hand, she is not ordained, has not otherwise accepted formal religious service, and was never formally commissioned by Gordon. Cf. Hosanna-Tabor, 565 U.S. at 191-192. Also, unlike the plaintiff in Hosanna-Tabor, DeWeese-Boyd’s position did not require the formal religious training that she obtained, and she was not given a different title because of it. On the other hand, the seminary training appears to have been relevant to her initial hiring, and it provided her with knowledge upon which she could have drawn to perform her integrative responsibilities. In Our Lady of Guadalupe, the Court cautioned against placing too much weight on formal training, at least at the elementary school level:

“the Ninth Circuit assigned too much weight to the fact that Morrissey-Berru and Biel had less

formal religious schooling than Perich. The significance of formal training must be evaluated in light of the age of the students taught and the judgment of a religious institution regarding the need for formal training. The schools in question here thought that Morrissey-Berru and Biel had a sufficient understanding of Catholicism to teach their students, and judges have no warrant to second-guess that judgment or to impose their own credentialing requirements.” (Citations and footnote omitted.)

Our Lady of Guadalupe, 140 S. Ct. at 2067-2068.

In addition to her title and training, which go to the question whether Gordon held DeWeese-Boyd out as a minister, we consider whether DeWeese-Boyd ever held herself out as a minister for Gordon.<sup>22</sup> See

---

<sup>22</sup> The defendants would have us rely, in part, on DeWeese-Boyd’s professed faith in determining that she was a minister. DeWeese-Boyd has made several statements concerning the importance of her faith to her life and how it motivates her personal choices, including her choice of profession and the manner in which she practices it. We are, however, cautioned against inquiring into what it means for her to practice her faith. See Our Lady of Guadalupe, 140 S. Ct. at 2069 (argument that plaintiff was not within ministerial exception because she was not “practicing Catholic” rejected because it “would require courts to delve into the sensitive question” of meaning of “practicing”). We may, and do, consider that she was required to share and affirm Gordon’s Statement of Faith as a duty of her job; but we cannot, as the defendants suggest, rely on her professions as evidence that DeWeese-Boyd was a minister. Her personal statements of faith are not equivalent to expressly holding herself out as a minister, as Perich did in Hosanna-Tabor; as the defendants themselves testified, being a Christian and being a ministerial employee are not the same. See

Hosanna-Tabor, 565 U.S. at 191-192. This factor, although again not dispositive, weighs against finding that the ministerial exception applies. It is clear that she did not view herself as a minister, either formally or informally, in her role as a professor at Gordon. On the contrary, she was part of the group of professors opposed to the addition of “minister” to the handbook because they viewed it as “wrongly describing the faculty role within the College.” Unlike Perich, she never held herself out as a minister or referred to herself as such, and never claimed a ministerial housing allowance. See id.

Having evaluated “all relevant [material] circumstances,” Our Lady of Guadalupe, 140 S. Ct. at 2067, we conclude that a faculty member with DeWeese-Boyd’s responsibilities at Gordon is significantly different from the ordained ministers or teachers of religion at primary or secondary schools in the cases that have come before the Supreme Court.<sup>23</sup>

---

Hosanna-Tabor, 565 U.S. at 191-192; Richardson v. Northwest Christian Univ., 242 F. Supp. 3d 1132, 1145 (D. Or. 2017) (“although there is ample evidence plaintiff held herself out as a Christian, there is no evidence she held herself out as a minister”). The notion that, in DeWeese-Boyd’s words, all Christians have “an undeniable call to minister to others” cannot be the basis of the ministerial exception, or else the exception would swallow the rule in every Christian context. Cf. Our Lady of Guadalupe, supra at 2055 (ministerial exception applies to “employment relationship between a religious institution and certain key employees”).

<sup>23</sup> The parties have identified several decisions from courts other than the United States Supreme Court that involve a ministerial exception analysis in an educational setting, but all except one were decided prior to Our Lady of Guadalupe, and none is directly analogous to the determination we must make.

---

See Temple Emanuel of Newton v. Massachusetts Comm'n Against Discrimination, 463 Mass. 472, 486 (2012) (teacher of “religious subjects at a school that functioned solely as a religious school, whose mission was to teach Jewish children about Jewish learning, language, history, traditions, and prayer” was ministerial employee); Menard v. Archdiocese of Boston, 98 Mass. App. Ct. 144, 150 (2020) (parish “director of music ministries” who “prayerfully” selected music and was expected to transmit “significant knowledge of her faith’s musical canon” and “convey[] the Church’s message” was ministerial employee); Grussgott, 882 F.3d at 659–660 (Hebrew teacher whose resume “tout[ed] significant religious teaching experience” and who followed religious curriculum, “integrate[d] religious teachings” into lessons, “taught her students about Jewish holidays, prayer, and the weekly Torah readings,” prayed, and performed certain religious rituals with students was ministerial employee); Fratello v. Archdiocese of N.Y., 863 F.3d 190, 195, 208-209 (2d Cir. 2017) (Catholic school principal who expressly applied for “important leadership role” with archdiocese, “understood that she would be perceived as a religious leader,” supervised leadership of Masses, led daily prayers, and updated parents on students’ spiritual development was ministerial employee); Lishu Yin v. Columbia Int’l Univ., 335 F. Supp. 3d 803, 817 (D.S.C. 2018) (teacher of English language at private Christian university who directly engaged in students’ spiritual formation by requiring them to pray together, directly preparing them for ministry roles, and planning and leading chapels was ministerial employee); Richardson, 242 F. Supp. 3d at 1145-1146 (assistant professor of exercise science with no specialized religious training at Christian university who “was expected to integrate her Christianity into her teaching and demonstrate a maturing Christian faith,” did not perform religious instruction, and “was charged with no religious duties such as taking students to chapel or leading them in prayer” was not ministerial employee); Braun v. St. Pius X Parish, 827 F. Supp. 2d 1312, 1319 (N.D. Okla. 2011), *aff’d*, 509 Fed. Appx. 750 (10th Cir. 2013) (Catholic school teacher required to “teach and act in accordance with the precepts of the Catholic Church” and to “aid in the Christian formation of students” who did not teach religion or lead students in prayer and was not Catholic was not ministerial

DeWeese-Boyd was not ordained or commissioned; she was not held out as a minister and did not view herself as a minister; and she was not required to undergo formal religious training, pray with her students, participate in or lead religious services, take her students to chapel services, or teach a religious curriculum. Her responsibility to integrate the Christian faith into her teaching, scholarship, and advising was different in kind, and not degree, from the religious instruction and guidance at issue in Our Lady of Guadalupe and Hosanna-Tabor. See Hosanna-Tabor, 565 U.S. at 199 (Alito, J., concurring) (“The First Amendment protects the freedom of

---

employee); Adams vs. Indiana Wesleyan Univ., U.S. Dist. Ct., No. 3:09-CV-468 (N.D. Ind. July 15, 2010) (social work professor at university governed by Wesleyan church who incorporated church doctrine into classroom activities, used scriptural principles to illustrate ideas, and led “in-class ‘devotions’” was ministerial employee); Stately v. Indian Community Sch. of Milwaukee, Inc., 351 F. Supp. 2d 858, 869 (E.D. Wis. 2004) (teacher who “integrate[d] Native American culture and religion” into classes, participated in and led religious ceremonies, and served as mentor to students regarding their spiritual health was ministerial employee); Kirby v. Lexington Theological Seminary, 426 S.W.3d 597, 611-614 (Ky. 2014) (seminary professor of Christian social ethics who gave sermons on multiple occasions, served communion, taught classes on religious doctrine, opened class with prayer each day, affirmatively promoted students’ development in ministry, and served as representative of seminary at events on multiple occasions was ministerial employee); Kant v. Lexington Theological Seminary, 426 S.W.3d 587, 593–595 (Ky. 2014) (Jewish professor of religious studies and history of religion at Christian seminary “was a source of religious instruction but did not play an important role in transmitting the Seminary’s faith to the next generation” and thus was not ministerial employee [quotations and alteration omitted]).

religious groups to engage in certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith”).

We recognize that some of the language employed in Our Lady of Guadalupe may be read more broadly, in a way that would include every educator at a religious institution. As Gordon has stated, the integrative function applies to all teachers at the college, whether they teach computer science, calculus, or comparative religion.<sup>24</sup> See Richardson v. Northwest Christian Univ., 242 F. Supp. 3d 1132, 1138-1139, 1145–1146 (D. Or. 2017) (“If plaintiff was a minister, it is hard to see how any teacher at a religious school would fall outside the exception. Courts have properly rejected such a broad reading . . . , which would permit the ministerial exception to swallow the rule that religious employers must follow federal and state employment laws”).

It would also apply, Gordon implies, to all its employees, as integrating the Christian faith into daily life and work is part of the college’s mission for

---

<sup>24</sup> At some points, the defendants have suggested DeWeese-Boyd was a ministerial employee because she was a professor of social work and there is a strong connection between the field of social work and Christian values. It is clear that Gordon does not view any one subject as more sacred or less so than others. To rely on evidence implying that social work is particularly Christian would require us to go too far in examining the defendants’ testimony as to the Protestant beliefs underpinning Gordon’s educational philosophy.

everyone in the community,<sup>25</sup> whether they be coaches, food service workers, or transportation providers. This would provide a significant expansion of the ministerial exception well beyond “individuals who play certain key roles” in a religious institution. Our Lady of Guadalupe, 140 S. Ct. at 2060. It would also change the existing understanding of those “personnel who are essential to the performance” of the religious instructions, services, and rituals. Hosanna-Tabor, 565 U.S. at 199 (Alito, J., concurring). The integration of religious faith and belief with daily life and work is a common requirement in many, if not all, religious institutions. As a result, the breadth of this expansion of the ministerial exception and its eclipsing and elimination of civil law protection against discrimination would be enormous.

We recognize that a case need not mirror Hosanna-Tabor and Our Lady of Guadalupe in order for the ministerial exception to apply. Here, however, the facts are materially different. Thus, the significant expansion of the ministerial exception doctrine requested by Gordon is not dictated nor, do we believe, directed by existing Supreme Court precedent. It is our understanding that the ministerial exception has been carefully circumscribed to avoid any unnecessary conflict with civil law.

---

<sup>25</sup> Gordon’s Statement of Life and Conduct includes “recognizing the Lordship of Christ in every activity” and a “responsibility for service to others” among its foundational biblical principles.

In sum, we conclude that DeWeese-Boyd was expected and required to be a Christian teacher and scholar, but not a minister.<sup>26</sup> Therefore, the ministerial exception cannot apply as a defense to her claims against Gordon.<sup>27</sup>

4. Conclusion. We answer the reported question in the negative. The Superior Court judge did not err in dismissing on summary judgment the affirmative defense of the ministerial exception, which was recognized by the United States Supreme Court for the first time in Hosanna-Tabor, 565 U.S. at 188-190. The case is remanded for further proceedings consistent with this opinion.

So ordered.

---

<sup>26</sup> The distinction between being a Christian teacher and scholar and a Christian minister is one DeWeese-Boyd has drawn herself and is one drawn by many of Gordon's faculty in response to the change in the handbook that occurred eighteen years into her tenure, and that attempted to collapse the distinction. The defendants have also testified that being a Christian scholar and a Christian minister, or a Christian and a Christian minister, are not equivalent, although they maintain that Gordon faculty are both.

<sup>27</sup> Because we conclude that DeWeese-Boyd was not a ministerial employee, we need not reach the question whether the ministerial exception bars her contract claims. See Hosanna-Tabor, 565 U.S. at 196 ("We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers").

COMMONWEALTH OF MASSACHUSETTS  
ESSEX, ss.  
SUPERIOR COURT  
CIVIL ACTION  
NO. 1777CV01367

MARGARET DEWEESE-BOYD

v.

GORDON COLLEGE & others<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER  
ON DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT ON THE FIRST AMENDMENT  
MINISTERIAL EXCEPTION (PAPER NO. 33)  
AND PLAINTIFF'S CROSS-MOTION ON THE  
FIRST AMENDMENT MINISTERIAL  
EXCEPTION (PAPER NO. 33.2)**

Jeffrey T. Karp, Associate Justice, Superior Court

The “ministerial exception” is an affirmative defense grounded in the Religious Clauses of the First Amendment that precludes government interference with employment relationships between religious institutions and their ministerial employees.

Before the Court are cross-motions for summary judgment which ask the Court to determine whether the ministerial exception applies in this case to prohibit employment discrimination and other claims brought by a former professor of social-work against her former employer, a religious liberal arts college.

---

<sup>1</sup> D. Michael Lindsay and Janel Curry.

More specifically, plaintiff Margaret DeWeese-Boyd (“DeWeese-Boyd”) claims defendants Gordon College (“Gordon” or “College”), its president, D. Michael Lindsay (“Lindsay”), and its provost, Janel Curry (“Curry”) (collectively, “Gordon Defendants”) discriminated against her after she vocally and publicly opposed Gordon College’s alleged discriminatory policies relating to “LGBTQ+ individuals” by denying her application for promotion to full professor in February 2017, despite she received the unanimous recommendation of the Faculty Senate. See Complaint And Jury Demand (Paper No. 1) (“Complaint”), ¶ 1.

In the Complaint, DeWeese-Boyd asserts claims against the Gordon Defendants for retaliation in violation of G.L. c. 151B, § 9 (Count I); associational and gender discrimination in violation of G.L. c. 151B, § 4 (Count II); violation of the Massachusetts Civil Rights Act (“MCRA”) at G.L. c. 12, §§ 11H and 11I (Count IV); breach of contract (Count VI); and, breach of the implied covenant of good faith and fair dealing (Count VII). In addition, DeWeese-Boyd asserts claims against Lindsay and Curry, individually, for aiding, abetting and interference with her civil rights in violation of G.L. c. 151B, § 4 (Count III), and tortious interference with contractual and/or advantageous relations (Count V).

On November 7, 2019, the parties were before the Court for a hearing on Defendants’ Motion For Summary Judgment On The First Amendment Ministerial Exception (Paper No. 33) (“Defendants’ Motion”) and Plaintiff’s Cross-Motion On The First Amendment Ministerial Exception (Paper No. 33.2) (“Plaintiff’s Cross-Motion”). On summary judgment,

the Gordon Defendants assert, and DeWeese-Boyd denies, that the ministerial exception applies to prohibit all of DeWeese-Boyd's claims.

For the reasons stated below, the Court concludes that, in the circumstances of this case, the ministerial exception does not apply. Therefore, Defendants' Motion is **DENIED** and Plaintiff's Cross-Motion is **ALLOWED**.

### **PROCEDURAL HISTORY**

On August 2, 2018, the Court (Tabit, J.) issued a Memorandum and Order (Paper No. 17) bifurcating discovery so that the first phase of discovery pertained solely to the ministerial exception the Gordon Defendants raise as an affirmative defense. The parties brought the cross-motions for summary judgment now before the Court at the close of the first phase of discovery solely on the issue of whether the ministerial exception applies.

On November 6, 2019, this Court (i.e., the undersigned judge), sua sponte, struck the Consolidated Statement Of Undisputed Material Facts (Paper No. 33.5) because the parties failed to comply with Mass. Super. Ct. R. 9A(b)(5), and ordered the parties to file an amended statement of facts.<sup>2</sup> See Order at Paper No. 34.

On December 6, 2019, the parties filed an Amended Consolidated Statement Of Undisputed

---

<sup>2</sup> In addition to its failure to comply with Rule 9A, the Consolidated Statement Of Undisputed Facts (Paper No. 33.5) ("SOF") contained more than 200 statements of fact, was 79 pages in length, and was argumentative and prolix. See Order at Paper No. 34.

Material Facts (Paper No. 36) (“Amended Statement Of Facts”)<sup>3</sup> and the following: (a) Amended Memorandum In Support Of Defendants’ Motion For Summary Judgment On The First Amendment Ministerial Exception (Paper No. 37); (b) Defendants’ Amended Opposition To Plaintiff’s Cross-Motion For Summary Judgment On The First Amendment Ministerial Exception (Paper No. 38); (c) Plaintiff’s Amended Opposition To Defendants’ Motion For Summary Judgment And Plaintiff’s Cross-Motion On The First Amendment Ministerial Exception And Memorandum In Support (Paper No. 39); and, (d) Plaintiff’s Amended Reply Brief In Support Of Plaintiff’s Cross-Motion On The First Amendment Ministerial Exception (Paper No. 40).

In resolving the pending cross-motions for summary judgment, the Court has relied on the oral arguments of counsel at the hearing, the parties’ Joint Exhibits Appendix For Summary Judgment (Paper No. 33.6) (“J.A.”), the Amended Statement Of Facts, and the aforementioned amended memoranda of law.<sup>4</sup>

---

<sup>3</sup> Although the Amended Statement Of Facts reduced the length and violations of Rule 9A(b)(5), unfortunately, the Gordon Defendants continued to violate the spirit and letter of Rule 9A(b)(5) when responding to the plaintiff’s statement of additional facts. See, e.g., the Gordon Defendants’ responses to the Plaintiff’s Statement of Additional Facts at Nos. 24, 30, 31, 35, 38, 39, 41, 44–46, 52, 98, 106, 118, 128, etc. Nevertheless, the Court considered the responses.

<sup>4</sup> In its amended memorandum of law in support of Defendants’ Motion, the Gordon Defendants “incorporate by reference the materials, arguments, and cases cited in the memoranda in support of their Motion for Judgment on the Pleadings.” (Paper No. 37, p. 15 n.2). However, the Court has not considered the Gordon Defendants’ Motion for Judgment on the

## **BACKGROUND**

The following facts are taken from the Amended Statement Of Facts and the summary judgment record.<sup>5</sup>

### **A. Gordon College**

Founded in 1889, Gordon College is an evangelical Christian undergraduate and graduate college. Its campus is located in Wenham, Massachusetts. The campus has two chapels set aside for prayer and meditation. Religious art, Christian artifacts, and Bible verses are displayed, and Christian music is played, throughout the campus.

The Commonwealth chartered Gordon to carry on the educational work begun in 1889 by the Reverend Gordon.<sup>6</sup> According to its formal Mission Statement, “Gordon College strives to graduate men and women distinguished by intellectual maturity and Christian character, committed to lives of services and prepared

---

Pleadings when deciding the cross-motions for summary judgment because the Court granted the parties leave to file memoranda in excess of the twenty-page limit required by Mass. Super. Ct. R. 9A(a)(5)(iv). To be sure, the Gordon Defendants’ amended memoranda span 51 pages, their amended statement of facts cover 18 pages, and the Joint Appendix is hundreds of pages. At bottom, the Court granted the parties sufficient opportunity to present their arguments at this stage of the proceedings.

<sup>5</sup> Additional relevant facts are discussed, *infra*, in the Court’s Discussion section.

<sup>6</sup> In 1970, Gordon’s divinity school, which is located in South Hamilton, MA, became a separate entity, Gordon-Conwell Theological Seminary. J.A., Ex. 4, p. 5, Art. 1.2.

for leadership worldwide.” J.A., Ex. 1, *Preamble*, p. 3; Ex. 4, Section 1.3, p. 5.

Gordon filed Restated Articles Of Organization with the Commonwealth on June 24, 1988. The Restated Articles state Gordon was formed “to provide a college education in the liberal arts and sciences to qualified persons; to provide training for the professions; to provide instruction in the Bible and other subjects; [and,] to prepare men and women for the work of foreign and home missions, for the duties of the Christian ministry and other special forms of Christian work[.]” J.A., Ex. 2, p. 1.<sup>7</sup>

Similarly, Gordon’s Bylaws, as amended on September 24, 2010, state, among other things, Gordon is “dedicated” to the following: “The historic, evangelical, biblical faith”; “[e]ducation, not indoctrination”; “[s]cholarship that is integrally Christian”; “[p]eople and programs that reflect the rich mosaic of the Body of Christ”; “[l]ife guided by the teaching of Christ and the empowerment of the Holy Spirit”; “[t]he maturation of students in all dimensions of life: body, mind, and spirit”; and, “[t]he application of biblical principles to transform society and culture.” J.A., Ex. 1, p. 3.

---

<sup>7</sup> In its annual nonprofit disclosure form filed with the Massachusetts Attorney General’s Office for the fiscal year ending June 30, 2017, when given the choice, Gordon selected a description of its purpose as “[h]igher education,” rather than “[r]eligious.” J.A., Ex. 33, p. 1. In addition, on the same disclosure, Gordon did not claim it was a religious organization and, thus, exempt from having to file a solicitation of contributions certificate. J.A., Ex. 33, p. 4.

Gordon's Mission Statement<sup>8</sup> reflects these purposes, stating, in part:

As an intentional Christian community, Gordon serves students from a wide range of backgrounds who embrace the College's broadly evangelical identity and desire an experience that combines an exceptional liberal arts education with an informed Christian faith.... Gordon also remains committed to the power of a liberal arts education to hone qualities most sought by employers—the ability to think holistically, reason analytically, communicate persuasively and—even more importantly—to act morally. Our primary responsibility is to prepare students for the long haul, to make them spiritually, intellectually, relationally and professionally ready for a lifetime of growth—from the first job out of college and beyond, into fields not yet existing .... Our mission is the foundation of all we do as we inspire the next generation toward faithful leadership for the common good.

J.A., Ex. 27.

In keeping with Gordon's mission, undergraduate student applicants must “have a profession of Christian faith ... [and] they have to be able to talk about that [profession] in the admissions interview.” J.A., Ex. 7, pp. 15-16. Further, all Gordon undergraduate students are required to complete the

---

<sup>8</sup> This Mission Statement is different from the aforementioned mission statement in the Bylaws and appears to come from Gordon's website. See J.A., Ex. 27.

College's "Core Curriculum," which "explores the liberal arts and sciences from a Christian perspective." J.A., Ex. 9, p. 1 (emphasis added). The purpose of the Core Curriculum is to, among other things, "foster [k]nowledge of God's character as revealed in Scripture and understood in the Church." J.A., Ex. 9. Mandatory classes include Old Testament History, Literature and Theology; New Testament History, Literature and Theology; and, Christian Theology.<sup>9</sup> J.A., Ex. 9. Gordon's curriculum also mandates "Christian Life and Worship" credits that students can fulfill by attending chapel services or other faith-based events on campus. J.A., Ex. 7, pp. 38-39.

### **B. The Faculty Handbook**

The Gordon College Administrative/Faculty Handbook ("Faculty Handbook") refers to Gordon "[a]s a Christian community of learners." J.A., Ex. 4, p. 5. The Faculty Handbook also contains various provisions about Gordon's perceptions of the role of faculty members and its expectations about their approach to work at Gordon. For example, the Faculty Handbook states "Gordon College approaches its educational task from within the fixed reference points of biblical theism, which provides a coherent perspective on life and the world." J.A., Ex. 4, p. 6 (emphasis added). Further, the Faculty Handbook states Gordon's "community" is "challenged" to, among other things, assist its students to "[p]ursue truth as revealed by God in Christ, Scripture and

---

<sup>9</sup> The Core Curriculum also includes numerous non-religious requirements including foreign language, and physical and outdoor education. J.A., Ex. 9.

Creation”; “[d]evelop a Christian worldview as a basis for both informed reflection and a reformation of culture”; “[b]egin a journey of lifelong, faith-directed learning”; “[r]espect the heritage of the Church and serve the Body of Christ with commitment, fidelity, and self-sacrifice”; and, “[a]cquire a sense of vocation and calling before God[.]” J.A., Ex. 4, p. 6.

According to the Faculty Handbook, the foundations of Gordon’s education philosophy are Christian doctrine, such as an acknowledgement that “God reveals Himself through His created order, Scriptures,” and a recognition “that God’s eternal Word is the ultimate source and foundation of all truth.” J.A., Ex. 4, Section 1.5, pp. 6–7.

In addition, according to the Faculty Handbook, faculty members “are expected to be fully prepared in all facets of their tasks as Christian teachers and advisors, both inside and outside the classroom,” and “[t]hey are expected to strive to engage students in their respective disciplines from the perspectives of the Christian faith and to teach with accuracy and integrity.” J.A., Ex. 4, p. 38. Moreover, the Faculty Handbook provides that “each member of faculty is expected to participate actively in the spiritual formation of [Gordon’s] students into godly biblically-faithful ambassadors for Christ[.]” and that, “[i]n the Gordon College context, faculty members are both educators **and ministers** to our students.”<sup>10</sup> J.A., Ex. 4, p. 64 (emphasis added).

---

<sup>10</sup> There is no dispute the Faculty Handbook states that faculty are expected to be “both educators **and ministers**” (emphasis added). However, DeWeese-Boyd contends that this latter phrase (i.e., “and ministers”) was added in 2016 to give

Finally, the Faculty Handbook states that “[a]mong the tasks of the Christian educator, none is more important than that which seeks the integration of faith, learning, and living.” J.A., Ex. 4, p. 4. Moreover, it states “integration” of faith and learning includes a professor’s assistance in helping students make connections between course content, Christian thought and principles, and personal faith and practice. J.A., Ex. 4, pp. 65-66. This principle of integration means “[t]he faculty of Gordon College is a community of Christians, committed to imaging Christ in all aspects of their educational endeavors.” J.A., Ex. 4, p. 64. Moreover, during DeWeese-Boyd’s employment, Gordon conducted seminars for professors about the integration of the Christian faith and learning.

### **C. Applying To, And Working For, Gordon College**

Gordon does not require that its professors have any specific formal religious training prior to starting their employment. J.A., Ex. 29, ¶ 17. Thus, a seminary degree is not a condition to becoming a professor at Gordon College.<sup>11</sup> J.A., Ex. 34, p. 60. However, when applying to work at Gordon College, all faculty, administrators, and trustees must sign a “Memorandum Of Understanding,” in which they agree to “support the goals and objectives of Gordon

---

more heft to Gordon’s assertion of the ministerial exception defense, and that there was significant faculty opposition to adding the phrase.

<sup>11</sup> Although Gordon does not require its professors to have seminary degrees, many do, including DeWeese-Boyd. J.A., Ex. 62, Answer No. 18.

College as a distinctively Christian Institution of higher learning”; “acknowledge personal agreement with the Statement of Faith”; and, “agree to abide by” the standards set forth in “the [S]tatement of ‘Life and Conduct at Gordon College[.]’ ” J.A., Ex. 5.

In turn, the Statement of Faith,<sup>12</sup> with which faculty members must agree, provides, *inter alia*, that: (1) “[t]he 66 canonical books of the Bible as originally written were inspired by God”; (2) “[t]here is one God, the Creator and Preserver of all things, infinite in being and perfection”; (3) “humankind can be saved only by the grace of God”; (4) “it is the responsibility of the believer to contribute by word and deed to the universal spread of the gospel”; and (5) “[a]t the end of the age the bodies of the dead shall be raised[,] ... [t]he righteous shall enter into full possession of eternal bliss[,] ... [and] the wicked shall be condemned to eternal death.” J.A., Ex. 6.

Similarly, the Statement of Life and Conduct,<sup>13</sup> with which faculty members must agree to obey, states “Gordon College strives to maintain its identity as a Christian academic community of students, faculty, and staff.” It further states Gordon “expects” all members of the college community, including the faculty, to “[c]all themselves Christian by virtue of the grace of God and their personal commitment to Jesus Christ”; “[r]ecognize the Bible to be the Word of God

---

<sup>12</sup> The Statement of Faith is set forth in Section 1.6 of the Faculty Handbook.

<sup>13</sup> The Statement of Life and Conduct is set forth in Section 1.7 of the Faculty Handbook. In addition to faculty members, all students agree to abide by the Statement of Faith and the Statement of Life and Conduct. J.A., Ex. 8, p. 3.

and hence fully authoritative in matters of faith and conduct”; and, “[h]ave a sincere desire for that commitment to mature both in insight and behavior.” J.A., Ex. 6.

In addition, the Statement of Life and Conduct provides that individuals who join Gordon’s community must, *inter alia*, “[u]nderstand that they have become part of an evangelical Christian tradition which is to be respected and valued”; “[s]trive to exemplify those positive elements of Christian behavior which are taught in Scripture”; and, “[a]ssume responsibility for their own behavior as it reflects upon their Lord, their community and themselves, particularly in the area of personal freedom, where discretion, moderation and restraint must be practiced.” J.A., Ex. 6. The Statement of Life and Conduct also sets forth certain faith-based “Behavioral Standards,” with which all students, faculty, and staff agree to comply, such as refraining from “words and actions which are expressly forbidden in Scripture.” J.A., Ex. 6.

President Lindsay testified that all Gordon employees must be “committed to the evangelical mission of the institution[,]” and that “journeys of faith are evaluated ... when employees are hired” and “through the performance review process.” J.A., Ex. 7, p. 18. He testified further that, when he interviews faculty applicants, he emphasizes “the importance of taking seriously signing the Statement of Faith and the Statement of Life and Conduct and being able to embrace the Christian mission and purpose of the institution.” J.A., Ex. 7, p. 42. President Lindsay also

testified that he “liken[s] joining Gordon College to joining a religious order.”<sup>14</sup> J.A., Ex. 7, p. 42.

**D. DeWeese-Boyd’s Hiring And Retention By Gordon College**

Prior to joining Gordon, DeWeese-Boyd received a master’s degree in General Theological Studies from Covenant Theological Seminary in St. Louis. J.A., Ex. 12. She performed mission work in the Philippines in addition to her seminary training.

DeWeese-Boyd first contacted Gordon about a tenure-track faculty position in its social work department on February 25, 1998. She sent a cover letter to Gordon’s then-Provost in which she stated, “[a]s a product of a Christian liberal arts college ... I very much want to participate in, and contribute to, Christian liberal arts education.” J.A., Ex. 12. She further stated that her seminary training and mission work in the Philippines “could be of particular benefit to Gordon College Students.” J.A., Ex. 12.

On March 9, 1998, DeWeese-Boyd submitted an application for employment to Gordon in which she acknowledged her personal agreement with the Statement of Faith, agreed to comply with the Statement of Life and Conduct, described her Christian belief and her pilgrimage as a Christian, and explained how her Christian commitment affected her scholarship. J.A., Ex. 15. In the application, DeWeese-Boyd was asked her understanding of the basic responsibilities of a faculty member in an institution of Christian higher

---

<sup>14</sup> Lindsay was not the president of Gordon College in 1998 when DeWeese-Boyd was hired.

education, to which DeWeese-Boyd stated “to provide a critical, and distinctly Christian, perspective[,] ... to guide and mentor each student in such a way as to help her discern how Christianity impacts upon her particular discipline[,] ... [and] to teach her students how to do ‘Christian scholarship.’”<sup>15</sup> J.A., Ex. 15.

In a letter dated June 9, 1998, Gordon College offered DeWeese-Boyd a “tenure track faculty position.” J.A., Ex. 16. This letter stated, “Your achievements, academic pedigree, commitment to the Triune God, and expressed desire to benevolently serve in this Christian liberal arts setting have led to your appointment to the faculty.” J.A., Ex. 16. In closing, the letter stated, “Welcome to Gordon College faculty. May the Lord always bless your work here as you join us in the ‘precious trust’ of developing young Christian hearts, hands, and minds.” J.A., Ex. 16.

Gordon specifically hired DeWeese-Boyd as an Assistant Professor to work in Gordon’s Social Work Department. She began teaching in fall 1999.

In 2004, Gordon promoted DeWeese-Boyd to Associate Professor and Gordon approved her for tenure in September 2009. J.A., Ex. 29.

---

<sup>15</sup> There appears to be no dispute that applicants for faculty positions are required to sign the Memorandum of Understanding discussed above. See SOF, ¶ 12. However, the record is unclear regarding whether DeWeese-Boyd signed it. Nevertheless, there is no dispute that in signing her application for employment, DeWeese-Boyd acknowledged her personal agreement with the Statement of Faith and agreed to comply with the Statement of Life and Conduct, two things memorialized in the Memorandum of Understanding. See J.A., Ex. 15, p. 2.

After her promotion in 2004, DeWeese-Boyd's formal title was Associate Professor of Social Work, with tenure. J.A., Ex. 37. She avers she never held herself out as a minister inside or outside Gordon, and she never regarded herself as a minister. J.A., Ex. 29, ¶¶ 19-20.

### **E. The Social Work Department**

The Gordon College Social Work Program Student Handbook ("Social Work Handbook") states the program "prepares graduates for beginning level generalist social work practice and for graduate study in social work." J.A., Ex. 21, p. 78. In addition, the Social Work Handbook provides that the College's social work program is "informed by a Christian worldview which affirms the value and dignity of every person[.]" and requires "Christians to strive for the enhancement of human wellbeing, the alleviation of poverty and oppression, and the healing of the whole person and the whole society." J.A., Ex. 21, p. 79.

The goals of the Social Work Program include the integration of social work and Christian values, and the program's competencies are "designed," at least in part, to reflect this goal. J.A., Ex. 21, pp. 79-80. Moreover, the program's "supporting intentions" include, *inter alia*, "[p]reparing graduates to integrate Christian and social work values in their practice of social work[.] .. [p]reparing graduates for graduate study in social work, related disciplines, or Christian ministry[.] [and] [p]reparing graduates for service in other social service fields, including Christian ministry." J.A., Ex. 21, p. 81.

## **F. Promotion & Integration Of Faith And Teaching**

As stated, Gordon expects its faculty members to integrate the Christian faith into their teaching. The significance of “integration” in Gordon’s mission is illustrated by its prominence in the Faculty Handbook and the Statement of Faith. In summarizing how the faculty practices “integration,” Lindsay testified that “[i]n their teaching, they are expected to profess – and that’s the professor – to profess the Christian faith; to assist students in their spiritual journey as part of their intellectual formation; to be available to minister to students with questions, personal needs, spiritual exploration; ... ; [and,] to inculcate the Christian identity and to transmit it to the next generation.” J.A., Ex. 14, p. 43. According to Lindsay, “all professors [are] expected to profess the Christian faith. It is the purpose of the institution.” Id. at p. 55.

As faculty members progress through the promotion and tenure application processes at Gordon, they are required to describe in detail how they integrate faith and teaching.<sup>16</sup> In 2002,

---

<sup>16</sup> In the summary judgment record, Gordon submitted student feedback regarding DeWeese-Boyd’s integration of faith and teaching. This came in the form of Course & Faculty Evaluation Forms (“Forms”) in which students claimed DeWeese-Boyd “did a great job” of integrating faith and teaching. See J.A., Ex. 23. DeWeese-Boyd objects on hearsay grounds to the Court considering the Forms. The Court overrules the objection because the Forms qualify as business records. However, the Forms are not helpful to the Court’s consideration of whether the ministerial exception applies because there is little dispute that DeWeese-Boyd’s responsibilities included

DeWeese-Boyd submitted her first integration paper to Gordon. J.A., Ex. 18. In the cover letter accompanying this paper, she stated, “I understand my work to be inherently integrated because the topics and issues that I choose to spend time researching, thinking about, and writing on are topics and issues that I understand to be fundamental to the call of Christian life and action in the world.” J.A., Ex. 18, p. 4.

In 2009, Gordon approved DeWeese-Boyd for tenure. As part of her application for tenure, DeWeese-Boyd submitted a paper entitled “Reflections on Christian Scholarship.” J.A., Ex. 19. Therein, DeWeese-Boyd made various statements about what she understood integration to mean and how she integrated the Christian faith into her teaching, including the following:

- “I understand the work of integration to be fundamentally about ... pursuing scholarship that is faithful to the mandates of Scripture” and “the vocational call of Christ[.]” J.A., Ex. 19, p. 1.
- “My approach to Christian scholarship—indeed, my choice of disciplinary field as well as my scholarly interest and pursuits within that field—are shaped by the Scriptural mandate to pursue shalom.” J.A., Ex. 19, p. 5.
- “In my vocation as [a] Christian Scholar, I strive to make useful contributions to the body of knowledge in my area of expertise—

---

integrating faith and teaching, and her performance in doing so is irrelevant at this stage of the proceedings.

contributions informed by a uniquely Christian perspective, as well as one with practical applications for human society.” J.A., Ex. 19, p. 8.

- “My Christian commitment also affects my scholarship by allowing me to see my work as participation in the ministry of Christian reconciliation.” J.A., Ex. 19, p. 8.
- “[I]n my role as Christian educator, a desire to follow Christ impacts my work in several ways. First and foremost it informs the choice of disciplinary field in which I teach, as discussed previously. Secondly, it plays out in the methods with which I teach, and how I interact with students.” J.A., Ex. 19, p. 9.
- “In sum, I believe it is our understanding of mandates of Scripture, our understanding of vocation, as well as the dictates of our own consciences, that help shape how we come to view—and take up—our individual roles in furthering in (sic) the Kingdom of God as Christian scholars and educators.” J.A., Ex. 19, p. 10.

In 2016, DeWeese-Boyd submitted an application for promotion to Full Professor. J.A., Ex. 20. In the “Introduction” section of the application, she stated, “my desire to follow Christ informs my chosen field of study, my approach to teaching, the topics I engage as a scholar, and my approach to institutional service.” J.A., Ex. 20, p. 1. Further, DeWeese-Boyd stated, “[t]hroughout my life, I have sought to cultivate a living and active faith in Jesus Christ—one that informs all of my personal and professional

endeavors.” J.A., Ex. 20, p. 1. Moreover, in the application under the heading “Scholarship/Professional Development,” DeWeese-Boyd stated, “God calls us throughout Scripture to struggle against flawed social, political and economic structures .... For my part, this means taking up scholarly questions that have moral and ethical significance beyond their academic merits.” J.A., Ex. 20, p. 9.

During her employment at Gordon, DeWeese-Boyd attended religious services, convocations, and religious gatherings with students at the Gordon chapel.<sup>17</sup> SOF, ¶ 64. She also attended a local church at which Gordon students sometimes attended. SOF, ¶ 65.

#### **G. Gordon College Denial Of DeWeese-Boyd’s Promotion To Full Professor**

According to the Faculty Handbook, “[t]he Faculty Senate and the provost are responsible for coordinating faculty evaluation efforts.” J.A., Ex. 4, p. 43. The Faculty Senate is responsible for making recommendations on professors’ applications for tenure and promotions. J.A., Ex. 4, pp. 39, 41-42.

On December 15, 2016, the Faculty Senate informed DeWeese-Boyd in writing that it unanimously recommended her to Provost Curry for promotion to full professor. The Faculty Senate “found [her] to be meritorious in teaching and institutional service and [her] scholarship was assessed at the expected level.” J.A. Ex. 45, p. 1.

---

<sup>17</sup> The extent to which DeWeese-Boyd participated in these religious services is unclear in the record.

Notwithstanding the recommendation from the Faculty Senate, in a letter dated February 8, 2017, Provost Curry declined to recommend DeWeese-Boyd for promotion to President Lindsay and the Board of Trustees. J.A., Ex. 46. Lindsay “concurred with [Curry’s] assessment.” J.A., Ex. 46. According to Curry, DeWeese-Boyd was a “strong teacher” with “very high” teaching evaluations. *Id.* However, DeWeese-Boyd’s scholarly productivity “did not reach acceptable levels” for a Gordon faculty member, and her professionalism and follow through on institutional projects about which she may not feel passionate was lacking. J.A., Ex. 46.

DeWeese-Boyd contends Gordon College denied her promotion because she “has been one of the most outspoken critics among the Gordon College faculty regarding the College’s policies and practices” concerning “LGBTQ+ individuals” and the College’s prohibition against sexual activity outside of marriage between one man and one woman. Complaint, ¶ 18. DeWeese-Boyd claims her “outspoken” criticism and her gender resulted in the denial of her application for promotion. Complaint, ¶ 25.

### **DISCUSSION**

In Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C., 565 U.S. 171, 188-190 (2012) (“Hosanna-Tabor”), the United States Supreme Court recognized the existence of the “ministerial exception” as an affirmative defense for the first time. Citing Hosanna-Tabor and other cases, Gordon College argues it is entitled to invoke the ministerial exception affirmative defense because it is a religious

institution and DeWeese-Boyd was a ministerial employee, and, accordingly, it is entitled to summary judgment on all DeWeese-Boyd's claims.

On the other hand, also citing Hosanna-Tabor and other cases, DeWeese-Boyd argues summary judgment should enter in her favor, dismissing the ministerial exception affirmative defense, because the ministerial exception is inapplicable here since Gordon College is not a religious institution and she was not a ministerial employee. Alternatively, she argues that, even if the Court decides the ministerial exception applies, the exception does not bar her contract-based and gender discrimination claims.

As discussed below, the Court finds that, although Gordon is a religious institution for purposes of the ministerial exception, DeWeese-Boyd was not a ministerial employee. Therefore, Gordon may not invoke the exception to bar any of DeWeese-Boyd's claims and summary judgment dismissing the affirmative defense must enter in her favor.<sup>18</sup>

## **I. STANDARD OF REVIEW**

A motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

---

<sup>18</sup> The parties agree that the determination of whether the ministerial exception affirmative defense applies to prohibit DeWeese-Boyd's claims is a matter appropriate for resolution at the summary judgment stage. As discussed below, case law applying the exception confirms this.

a judgment as a matter of law.” Mass. R. Civ. P. 56(c). “The moving party has the burden of demonstrating affirmatively the absence of a genuine issue of material fact on every relevant issue, regardless of who would have the burden on that issue at trial.” Arcidi v. NAGE, Inc., 447 Mass. 616, 619 (2006).

The party opposing summary judgment must respond and allege facts establishing the existence of a genuine issue of material fact for trial. Polaroid Corp. v. Rollins Envtl. Servs. (N.J.), Inc., 416 Mass. 684, 696 (1993). Moreover, “[i]n deciding a motion for summary judgment, the motion judge must consider all factual allegations, and draw all reasonable inferences therefrom, in favor of the nonmoving party.” Godfrey v. Globe Newspaper Co., Inc., 457 Mass. 113, 119 (2010); see also Willitts v. Roman Catholic Archbishop of Boston, 411 Mass. 202, 202 (1991) (any conflicts in the supporting materials are answered in favor of the non-movant). However, although the Court views the evidence in the light most favorable to the non-moving party, it does not weigh evidence, assess credibility, or find facts. Drakopoulos v. United States Bank Nat’l Ass’n, 465 Mass. 775, 788 (2013) (quoting O’Connor v. Redstone, 452 Mass. 537, 550 (2008)).

## **II. OVERVIEW OF THE MINISTERIAL EXCEPTION**

The First Amendment to the United States Constitution provides, in part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Generally speaking, the Religion Clauses of the First Amendment bar government action that establishes

religion (Establishment Clause) or interferes with the practice of religion (Free Exercise Clause).

As relevant here, “[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 [ministers].” Hosanna-Tabor, 565 U.S. at 184. More specifically, “[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. Therefore, as relevant here, the essence of the Religion Clauses is that a court should neither require a religious institution to retain or accept an unwanted minister, nor punish it for not doing so because, to do so, interferes with the institution's internal governance.

The Federal Circuit Courts of Appeals and various state appellate courts, including the Supreme Judicial Court,<sup>19</sup> “have uniformly recognized the existence of a ‘ministerial exception,’ grounded in the

---

<sup>19</sup> In Williams v. Episcopal Diocese of Mass., 436 Mass. 574 (2002), the SJC affirmed the dismissal of an Episcopal priest’s claim of sexual discrimination brought under G.L. c. 151B, § 4. Id. at 575. In so doing, the SJC observed that Federal courts had long recognized the ministerial exception to “preclude[ ] civil courts from adjudicating employment discrimination suits by ministers against their church or religious institution.” Id. at 577 (citations omitted). Without specifically adopting the ministerial exception, or its nomenclature, the SJC applied the exception in substance when it ruled that the Religion Clauses of the First Amendment “precludes jurisdiction of civil courts over church disputes touching on matters of doctrine, canon law, polity, discipline, and ministerial relationships [and] is firmly established in Massachusetts case law.” Id. at 579 (citations omitted).

First Amendment, that precludes application of [civil rights] legislation to claims concerning the employment relationship between a religious institution and its ministers.”<sup>20</sup> *Id.* at 188 (citations omitted). However, it was not until 2012 in Hosanna-Tabor that the Supreme Court had an opportunity to officially recognize the ministerial exception for the first time. In so doing, the Court clarified that the ministerial exception “operates as an affirmative defense to an otherwise cognizable claim, [rather than] a jurisdictional bar.” *Id.* at 195 n.4.

In reaching the holding in Hosanna-Tabor, the Supreme Court stated:

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According the state the power to determine

---

<sup>20</sup> The ministerial exception traces its roots to the Fifth Circuit’s decision in McClure v. Salvation Army, 460 F.2d 553 (5th Cir. 1972). See Kirby v. Lexington Theol. Seminary, 426 S.W.3d 597, 605 (Ky. 2014) (“Barring a Salvation Army employee’s Title VII claim, the Fifth Circuit, in creating the ministerial exception over forty years ago [in McClure], relied heavily on preserving church autonomy and not even peeking over the ‘wall of separation’ between church and state.”) (quoting McClure, 460 F.2d at 558).

which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Id. at 188-189.

Accordingly, the Supreme Court observed that the purpose of the ministerial exception “is not to safeguard a church’s decision to fire a minister only when it is made for a religious reason.” Id. at 194. Rather, the purpose is to “ensure[ ] that the authority to select and control who will minister to the faithful -- a matter ‘strictly ecclesiastical,’ [ ] -- is the church’s alone.” Id. at 194-195 (quoting Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 119 (1952)).<sup>21</sup>

Not long after the Supreme Court’s decision in Hosanna-Tabor, the Supreme Judicial Court applied the holding in Temple Emanuel of Newton v. Massachusetts Comm’n Against Discrimination, 463 Mass. 472 (2012) (“Temple Emanuel”). In that case, the SJC held that the ministerial exception prohibited discrimination claims asserted by a teacher that “taught religious subjects at a school that functioned solely as a religious school, whose mission was to

---

<sup>21</sup> “The ministerial exception is best understood as a narrow, more focused subsidiary of the ecclesiastical abstention doctrine,” Kirby, 426 S.W.3d at 604, which is also called the church autonomy doctrine. Doe v. First Presbyterian Church U.S.A., 421 P.3d 284, 288-289 (Ok. 2017). That doctrine, first recognized in Watson v. Jones, 80 U.S. 679 (1871), is rooted in the Religious Clauses of the First Amendment and prohibits courts from interfering “in matters of church government, faith and doctrine.” Doe, 421 P.3d at 289.

teach Jewish children about Jewish learning, language, history, traditions, and prayer.” *Id.* at 486. In so holding, the SJC in Temple Emanuel stated:

In deciding whether the ministerial exception applies to a religious school teacher, the fundamental question is whether it would infringe the free exercise of religion or cause excessive entanglement between the State and a religious group if a court were to order a religious group to hire or retain a religious teacher that the religious group did not want to employ, or to order damages for refusing to do so..... We conclude that it would. **Where a school’s sole mission is to serve as a religious school**, the State should not intrude on a religious group’s decision as to who should (and should not) teach its religion to the children of its members.

Id. (internal citations omitted) (emphasis added).

For the ministerial exception to apply as a bar to an employment discrimination claim, the employer must demonstrate two things: (a) that it is a religious institution; and, (b) that the employee is a ministerial employee (i.e., a “minister”).<sup>22</sup> EEOC v. R.G., 884 F.3d 560, 581 (6th Cir. 2018) (citations omitted); see also Lishu Yin v. Columbia Int’l Univ., 335 F. Supp. 3d 803, 812 (D. S.C. 2018) (“In order for the ministerial

---

<sup>22</sup> This Court has found very few reported Massachusetts decisions interpreting and applying the ministerial exception, in general, and the Hosanna-Tabor decision, specifically. As such, in resolving the pending motions, the Court has looked to other jurisdictions that have applied the exception and the holding in Hosanna-Tabor.

exception to apply, an employer must be a religious institution, and an employee must be a minister.”) (citation omitted); Kirby v. Lexington Theol. Seminary, 426 S.W.3d 597, 609 (Ky. 2014) (“The application of the ministerial exception requires two main inquiries: 1) is the employer a religious institution, and 2) is the employee a minister.”) (citation omitted); Winbery v. La. College, 124 So. 3d 1212, 1215 (La. Ct. App. 2013) (same).

### **III. GORDON COLLEGE IS A RELIGIOUS INSTITUTION FOR PURPOSES OF THE MINISTERIAL EXCEPTION**

As stated, “[b]oth Religion Clauses bar the government from interfering with the decision of a **religious group** to fire one of its ministers.” Hosanna-Tabor, 565 U.S. at 181 (emphasis added); see also id. at 184 (“The 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.”) (emphasis added). Hence, the first prong of the ministerial exception doctrine requires the Court to determine whether Gordon, the employer, is a religious institution capable of employing ministers.

Gordon College argues it qualifies as a religious institution for purposes of the ministerial exception because its mission is marked by clear and obvious religious characteristics. On the other hand, DeWeese-Boyd argues Gordon is not a religious institution because its primary purpose is that of a liberal arts college, not a religious institution; it is not affiliated with any particular church or

denomination; and, it declined to identify itself with the Commonwealth as having a religious purpose. The Court agrees with Gordon College.

Unfortunately, Hosanna-Tabor is not helpful in determining the first prong of the ministerial exception doctrine, i.e., determining whether the employer is a religious institution capable of having “ministers,” because the status of the plaintiff employer as a “religious group” was not at issue and not addressed by the Court. See Hosanna-Tabor, 565 U.S. at 177 (referring to “the employer [a]s a religious group”); see also Winbery, 124 So. 3d at 1214 (stating Hosanna-Tabor did not address how to determine whether the defendants were a religious organization entitled to protection under the Religious Clauses).<sup>23</sup>

Therefore, the Supreme Court did not provide any guidance in Hosanna-Tabor for trial courts to use to determine what organizations may properly invoke the ministerial exception. Nevertheless, both before and after Hosanna-Tabor, “[n]umerous courts have held that the term ‘religious institution,’ in this context, can include religiously affiliated schools, hospitals, and corporations.” Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 310 (4th Cir. 2004) (citations omitted).

---

<sup>23</sup> Likewise, in Temple Emanuel there was no dispute that the employer was a “religious group” capable of having “ministers.” See Temple Emanuel, 463 Mass. at 484 (“[The teacher] does not dispute that the mission of the [plaintiff] religious school is to instill in its students a commitment to lifelong Jewish learning and build on the central values of Jewish heritage, including learning, worship, and acts of loving kindness.”).

For example, in Kirby, decided after Hosanna-Tabor, the Supreme Court of Kentucky stated:

Importantly, the scope of “religious institution” is not so narrow that only traditional faith communities qualify. Across the federal circuits, the ministerial exception has been applied to religiously affiliated hospitals, schools, and corporations because they were sufficiently within the understanding of “religious institution.” **An entity, allegedly religiously affiliated, will be considered a “religious institution” for purposes of the ministerial exception “whenever that entity’s mission is marked by clear or obvious religious characteristics.”**

426 S.W.3d at 609 (citations and footnotes omitted) (emphasis added).

In Conlon v. IntersVarsity Christian Fellowship/USA, 777 F.3d 829 (6th Cir. 2015), the plaintiff “worked at InterVarsity Christian Fellowship/USA (“IVCF”) in Michigan as a spiritual director, involved in providing religious counsel and prayer.” Conlon, 777 F.3d at 831. The employer, IVCF, was:

“[A]n evangelical campus mission serving students and faculty on college and university campuses nationwide,” whose “vision is to see students and faculty transformed, campuses renewed and world changers developed.” IVCF’s purpose “is to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord: growing in love for God, God’s Word, God’s people of every

ethnicity and culture and God’s purposes in the world.”

Id.

In Conlon, IVCF terminated the plaintiff’s employment as a spiritual director upon learning she was contemplating divorce. Id. The plaintiff sued IVCF, claiming gender discrimination under federal and Michigan law. Id. at 832. Taking its “first opportunity since the Supreme Court’s decision in Hosanna-Tabor ... to address the ‘ministerial exception,’ ” id. (citation omitted), the Sixth Circuit recognized that, “[u]nlike the defendant in Hosanna-Tabor, IVCF is not a church. So [the court] must first determine whether IVCF is an organization that can assert the ministerial exception.” Id. at 833. In concluding that IVCF was a religious organization protected by the ministerial exception, the Sixth Circuit stated:

[T]he ministerial exception’s applicability does not turn on its being tied to a specific denominational faith; it applies to multidenominational and nondenominational religious organizations as well... “[I]n order to invoke the exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization.” ... “[A] religiously affiliated entity” is one whose “mission is marked by clear or obvious religious characteristics.” .... That is clearly the case for IVCF, with not only its Christian name, but its mission of Christian ministry and teaching.

Id. at 834 (internal citations omitted).

In Shaliehsabou, the Fourth Circuit observed that it “ha[d] never addressed whether the phrase ‘religious institution,’ in the context of the ministerial exception, applie[d] only to churches or church-operated entities, or whether it ha[d] broader meaning.” Shaliehsabou, 363 F.3d at 310. There, without “decid[ing] the full reach of the phrase ‘religious institution,’” id. at 311, the Fourth Circuit held that the ministerial exception applied to a “religiously affiliated” Jewish nursing home because: (a) “its By-Laws define[d] it as a religious and charitable non-profit corporation”; (b) its mission was “to provide elder care to ‘aged of the Jewish faith in accordance with the precepts of Jewish law and customs’ ”; and, (c) “[p]ursuant to [this] mission,” the nursing home “maintained a rabbi on its staff, employed mashgichim to ensure compliance with the Jewish dietary laws, and placed a mezuzah on every resident’s doorpost.” Id. at 310–311.

In Penn v. N.Y. Methodist Hosp., 884 F.3d 416 (2nd Cir. 2018), the Second Circuit “determine[d] whether a hospital—only historically connected to the United Methodist Church but still providing religious services through its pastoral care department —can invoke [the ministerial exception].” Id. at 418. There, the hospital: (a) was “no longer affiliated with the United Methodist Church”; (b) “took steps to distance itself from its religious heritage”; (c) changed its “by-laws [to] no longer require the hospital to seek permission from the United Methodist Church to make significant business decisions”; (d) did not “give the United Methodist Church the power to veto any amendment to the hospital’s articles of incorporation”; and, (e) did not have a religious

affiliation that “pervade[d] its work as a healthcare organization.” Id. at 425. Acknowledging that whether the hospital qualified as a “religious group” was “a close question,” id. at 423, the Second Circuit held that the hospital was such a group given “its history and continuing purpose,” id. at 424, and the fact that the employee worked as a chaplain in “the hospital’s Department of Pastoral Care.” Id. at 425.

The case of EEOC v. R.G. is instructive on the limits to finding an entity qualifies as a religious institution for purposes of invoking the ministerial exception. In that case, the employer was a funeral home with “a mission statement ... that [its] ‘highest priority [wa]s to honor God in all that we do as a company and as individuals’ and include[d] a verse of scripture on the bottom of the mission statement webpage.” Id. at 568. The funeral director “was terminated from the [f]uneral [h]ome ... shortly after [she] informed [the owner] that she intended to transition from male to female and would represent herself and dress as a woman while at work.” Id. at 566. On appeal, citing Conlon, the amici argued the ministerial exception applied to the former funeral director’s claim for unlawful sex discrimination. Id. at 581. The Sixth Circuit disagreed, stating:

As we made clear in Conlon, the ministerial exception applies only to “religious institution[s].” ... While an institution need not be “a church, diocese, or synagogue, or an entity operated by a traditional religious organization,” ..., **to qualify for the exception, the institution must be “marked by clear or obvious religious characteristics[.]”**

...

The Funeral Home, by comparison, has virtually no “religious characteristics.” Unlike the campus mission in *Conlon*, the Funeral Home does not purport or seek to “establish and advance” Christian values.... [T]he Funeral Home “is not affiliated with any church; its articles of incorporation do not avow any religious purpose; its employees are not required to hold any particular religious views; and it employs and serves individuals of all religions.” .... Though the Funeral Home’s mission statement declares that “its highest priority is to honor God in all that we do as a company and as individuals,” ..., the Funeral Home’s sole public displays of faith, ... amount to placing “Daily Bread” devotionals and “Jesus Cards” with scriptural references in public places in the funeral homes, which clients may pick up if they wish[.] ... The Funeral Home does not decorate its rooms with “religious figures” because it does not want to “offend[ ] people of different religions.” ....The Funeral Home is open every day, including on Christian holidays.

Id. at 582 (internal citations omitted) (emphasis added).

In Lishu Yin, another case decided after Hosanna-Tabor, the court held that a multid denominational Christian college that identified itself as a ministry was a religious institution that could invoke the ministerial exception. 335 F. Supp. 3d at 814–815. The court concluded that the college “possesse[d] ‘obvious religious characteristics,’ ” because it “‘train[ed] Christians for global missions, full-time

Christian ministry in a variety of strategic professions, and marketplace ministry.’ ” Id. at 815 (citation omitted). “Moreover, as part of its mission, [the college] educated people from a Biblical worldview to impact the nations with the message of Christ.’ ” Id. (citation omitted).

This Court has found very few reported decisions applying the ministerial exception to a religious liberal arts college, such as Gordon. Two such cases are EEOC v. Mississippi College, 626 F.2d 477 (5th Cir. 1980), and Winbery.

The case of Mississippi College involved “a four-year coeducational liberal arts institution[,] ... owned and operated by the Mississippi Baptist Convention (Convention), an organization composed of Southern Baptist churches in Mississippi.” Id. at 478. “The Convention conceive[d] of education as an integral part of its Christian mission.” Id. at 479. “Mississippi College [had a policy that sought] to assure that faculty and administrative officers [we]re committed to the principle that ‘the best preparation for life is a program of cultural and human studies permeated by the Christian ideal, as evidenced by the tenets, practices and customs of the Mississippi Baptist Convention and in keeping with the principles and scriptures of the Bible.’ ” Id. Further, “[t]he College’s facilities include[d] prayer rooms available for use by the students.” Id.

An applicant for an open position as a full-time psychology professor “filed a charge of discrimination with the EEOC, alleging that Mississippi College had discriminated against her on the basis of sex” in failing to hire her. Id. In finding that “[t]he

employment relationship between Mississippi College and its faculty and staff is one intended by Congress to be regulated by Title VII[,]” (i.e., in finding the ministerial exception did not apply)<sup>24</sup> the Fifth Circuit stated:

**The College is not a church. The College’s faculty and staff do not function as ministers. The faculty members are not intermediaries between a church and its congregation. They neither attend to the religious needs of the faithful nor instruct students in the whole of religious doctrine.** That faculty members are expected to serve as exemplars of practicing Christians does not serve to make the terms and conditions of their employment matters of church administration and thus purely of ecclesiastical concern.

Id. at 485 (emphasis added). Therefore, unlike all other Federal Circuit Courts, the Fifth Circuit conflated the two prongs of the ministerial exception doctrine by focusing solely on the role and functions of the college’s faculty and staff, and not on the religious attributes of the institution, itself.

In Winbery, the other case this Court found involving a religious liberal arts college, the Court of Appeal of Louisiana (Third Circuit), addressed the trial court’s dismissal for lack of subject matter jurisdiction of the plaintiffs’ claims of defamation and violations of civil rights against Louisiana College, a

---

<sup>24</sup> The term “ministerial exception” was not used by the Fifth Circuit. However, the substance of its analysis was the application of the ministerial exception doctrine in the context of a challenge to an administrative subpoena issued by the EEOC.

religious liberal arts college.<sup>25</sup> Winbery, 124 So. 3d at 1213. Relying on Hosanna-Tabor, the “[d]efendants argued that [the] [p]laintiffs’ suit was barred by the First Amendment’s Free Exercise Clause because the claims at issue concerned the employment relationship between a religious institution, or church, and one of its ministers.”<sup>26</sup> Id. at 1214. On the other hand, relying on Mississippi College, the plaintiffs in Winbery, former professors at Louisiana College, argued that the ministerial exception did not apply because “Louisiana College is [a] nonhierarchical religious college,” not a church, and the plaintiffs “were not ministers.” Id. The Court of Appeal of Louisiana ruled that Mississippi College, rather than Hosanna-Tabor, controlled on the issue of whether Louisiana College was a religious institution, and that the college was not such an entity. Id. at 1217. In so ruling, the Court of Appeal stated:

The trial court was correct in noting the clear similarities between Louisiana College and Mississippi College. Both colleges are coeducational liberal arts institutions that have

---

<sup>25</sup> The plaintiffs also brought claims against Louisiana Inerrancy Fellowship, which were not dismissed and not at issue.

<sup>26</sup> “Additionally, [the] [d]efendants contend[ed] that determining the validity of [the] [p]laintiffs’ claims would require a court to determine the truth or falsity of certain religious beliefs and Baptist ecclesiastical disagreements over inerrancy or literal truth of the Bible as scripture, thereby violating the constitutional protections against government entanglement with religion found in the First Amendment’s Establishment Clause.” Id.

undergraduate curricula which require all students to take certain religious courses. Mississippi College was owned and operated by the Mississippi Baptist Convention, an organization composed of Mississippi's Southern Baptist Churches. Louisiana College is governed by a Board of Trustees, elected by the Louisiana Baptist Convention, an organization composed of Louisiana's Southern Baptist Churches.

Id. at 1217 (citation omitted). Therefore, the Court of Appeal in Winbery “[ou]nd no error in the trial court’s determination that the ministerial exception of the First Amendment’s Free Exercise Clause [wa]s inapplicable.” Id. at 1218.<sup>27</sup>

At bottom, three principles are clear from the case law applying the first prong of the ministerial exception determination, i.e., whether the employer is a religious institution. First, “in order to invoke the

---

<sup>27</sup> This ruling appears to be *dicta*. The Court of Appeal ultimately ruled that the **defendant college’s appeal** was “without merit” because it impermissibly challenged “the reasons for judgment [i.e., that the college did not qualify for the ministerial exception] and not the judgment itself [i.e., that the trial court lacked subject matter jurisdiction].” Id. Thus, the court in Winbery went on to apply the ministerial exception to **the plaintiffs’ “appeal[ ] [of] the trial court’s ruling that it did not possess subject matter jurisdiction over their claims pursuant to the Establishment Clause.”** Id. at 1214. In so doing, the Winbery court ruled that “[t]he trial court was correct in holding that the dispute ... centers on the nature of Baptist theology and church governance over how theology is taught at Louisiana College and would, thus, require the court to impermissibly entangle itself in deciding ecclesiastical matters[,]” thus, the trial court judgment that it lacked subject matter jurisdiction was correct. Id.

[ministerial] exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization.” Conlon, 777 F.3d 829 at 834 (quotations and citation omitted). Second, notwithstanding the decisions in Mississippi College and Winbery, the exception applies to a “religiously affiliated entity,” whose “mission is marked by clear or obvious religious characteristics.” Shaliehsabou, 363 F.3d at 310; see also Kirby, 426 S.W. 3d at 609 (“An entity, allegedly religiously affiliated, will be considered a ‘religious institution’ for purposes of the ministerial exception ‘whenever that entity’s mission is marked by clear or obvious religious characteristics.’”). Third, and of particular significance to this case, “[j]ust like churches, schools may pursue a religious mission. Indeed, education is at the core of religious activity for many Americans.” Duquesne Univ. of the Holy Spirit v. NLRB, 947 F.3d 824, 828 (D.C. Cir. 2020) (citations omitted).

Applying the above case law and principles here, the Court finds Gordon College qualifies as a religious institution for purposes of the first prong of the ministerial exception doctrine. Gordon’s Restated Articles Of Organization state that it was formed to provide instruction in the Bible, and to prepare students missionary work, Christian ministry, and “other special forms of Christian work.” Similarly, according to its Bylaws, Gordon is dedicated the evangelical biblical faith, integrally Christian scholarship, programs that reflect “the rich mosaic of the Body of Christ,” a life guided by the “teaching of Christ and the empowerment of the Holy Spirit,” and

applying biblical principles “to transform society and culture.”

In addition, Gordon’s mission is as “an intentional Christian community” that serves those who “embrace the College’s broadly evangelical identity” and desire an experience that “combines an exceptional liberal arts education with an informed Christian faith.” Further, undergraduates wishing to attend Gordon must affirm their belief in the Christian faith, a purpose of Gordon’s Core Curriculum “is to foster knowledge of God's character and purpose as revealed in Scripture,” and attending students are required to take religious-based courses and attend religious services on campus.

Moreover, when applying to work at Gordon College, all applicants must sign a Memorandum Of Understanding, in which applicants agree to support the goal of Gordon College to serve “as a distinctively Christian Institution of higher learning,” agree with the Statement of Faith (which sets forth certain tenets of the Christian evangelical faith), and agree to abide by Gordon’s Statement of Life and Conduct (which includes a set of biblical-based behavioral standards). Further, faculty members are expected to integrate faith and teaching. Finally, Gordon’s campus has two chapels, and Christian artwork, artifacts, and Bible verses are displayed (and Christian music is played) throughout the campus.

In the face of the record evidence, DeWeese-Boyd’s three arguments that Gordon College does not qualify as a religious institution for purposes of the ministerial exception are unpersuasive. First, DeWeese-Boyd claims the College should not be

deemed a religious institution because it is not affiliated with any particular church or denomination. However, as stated, copious case law makes it clear that “[t]he ministerial exception’s applicability does not turn on its being tied to a specific denominational faith; it applies to multidenominational and nondenominational religious organizations as well.” Conlon, 777 F.3d at 834; see also Grussgott v. Milwaukee Jewish Day Sch., Inc., 882 F.3d 655, 658 (7th Cir. 2018) (“There is no requirement that an organization exclude members of other faiths in order to be deemed religious.”) (citing Hosanna-Tabor, 565 U.S. at 177).

Second, DeWeese-Boyd argues Gordon College is not a religious institution because its primary purpose is that of a liberal arts college. This assertion is equally unavailing. The Court has found, and DeWeese-Boyd has cited, no case that stands for the proposition that to qualify as a religious institution an entity’s purpose must be primarily or solely religious. In fact, “[a]n entity can provide secular services and still have substantial religious character.” Shaliehsabou, 363 F.3d at 310. As explained above, numerous religiously affiliated entities, such as schools and hospitals, which serve more than one purpose, have been deemed religious institutions for purposes of the ministerial exception. Thus, the fact that Gordon College is an educational institution does not prevent it from also qualifying as a religious organization.

Third, DeWeese-Boyd argues Gordon College does not qualify as a religious institution because it identifies its purpose in its annual filings with the Commonwealth as “higher learning” and it “declines”

to identify itself as having a religious purpose. However, this is just another version of DeWeese-Boyd's second argument, that Gordon is primarily an educational institution.

In sum, like the entities in Lishu Yin, Shaliehsabou and Penn, the record evidence supports the conclusion that Gordon College qualifies as a religious institution for purposes of the first prong of the ministerial exception determination. At bottom, Gordon's mission has clear religious characteristics.

#### **IV. DEWEESE-BOYD IS NOT A MINISTERIAL EMPLOYEE**

Now that the Court has ruled that Gordon is a religious institution for the purposes of the ministerial exception, a more challenging question remains regarding whether DeWeese-Boyd qualifies as a ministerial employee for purposes of the exception. In Hosanna-Tabor, the Supreme Court "recognized that the ministerial exception is not limited to the 'head of a religious congregation,' but declined to adopt a 'rigid formula for deciding when an employee qualifies as a minister.'" Temple Emanuel, 463 Mass. at 485 (quoting Hosanna-Tabor, 565 U.S. at 190). Instead, Hosanna-Tabor identified four "considerations" it found relevant to the determination in that case: (1) the employee's "formal title;" (2) "the substance reflected in that title;" (3) the employee's "use of that title;" and, (4) "the important religious functions [the employee] performed." Hosanna-Tabor, 565 U.S. at 192.

In addition to the above factors used by the Court in Hosanna-Tabor, it is important to recognize the "three errors" the Court found the Sixth Circuit made

in holding that the ministerial exception did not apply. *Id.* at 192. “First, the Sixth Circuit failed to see any relevance in the fact that [the employee] was a commissioned minister.... It was wrong for the Court of Appeals ... to say that an employee’s title does not matter.” *Id.* at 192–193. “Second, the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as [the employee].... [T]hough relevant, it cannot be dispositive that others not formally recognized as ministers by the church perform the same functions.” *Id.* at 193. “Third, the Sixth Circuit placed too much emphasis on [the employee’s] performance of secular duties. It is true that her religious duties consumed only 45 minutes of each work-day, and that the rest of her day was devoted to teaching secular subjects.... The issue ..., however, is not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant in assessing that employee’s status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations discussed above.” *Id.* at 193–194.

Gordon College argues that in applying the ministerial exception, both before and after Hosanna-Tabor, courts focus on the functions the employee performed for the religious organization. Here, according to Gordon, because DeWeese-Boyd was responsible for integrating its faith-based beliefs into her teachings, she qualifies as a ministerial employee.

On the other hand, relying on a strict application of the factors identified in Hosanna-Tabor, DeWeese-Boyd argues she was not a ministerial employee because her title did not suggest any ministerial or

religious role, she did not hold herself out as a minister, and she did not perform any religious functions of a minister. The Court concludes the strict application urged by DeWeese-Boyd is misplaced and inconsistent with how the ministerial exception has been applied before and after Hosanna-Tabor. Nevertheless, as discussed below, the Court finds that, when applying the proper framework, DeWeese-Boyd is not a minister for purposes of the exception.

**A. The Functional Approach In Determining Whether An Employee Qualifies As A “Minister”**

Before the Supreme Court decided Hosanna-Tabor, the majority of courts that applied the ministerial exception took a functional approach, i.e., focusing on the employee’s functions while employed at the religious organization. See, e.g., Hollins v. Methodist Healthcare, Inc., 474 F.3d 223, 226 (6th Cir. 2007) (noting that other federal Circuits “have considered a particular employee to be a ‘minister’ for purposes of the ministerial exception based on the function of the plaintiff’s employment position rather than the fact of ordination.”); Petruska v. Gannon Univ., 462 F.3d 294, 304 n.6 (3rd Cir. 2006) (“In evaluating whether a particular employee is subject to the ministerial exception, other circuits have concluded that the focus should be on the ‘function of the position.’”) (quoting Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164, 1168 (4th Cir. 1985)); Dayner v. Archdiocese of Hartford, 23 A.3d 1192, 1204 (Conn. 2011) (“In determining whether a plaintiff’s employment related claims against a religious institution are subject to the ministerial exception, the federal circuit courts generally rely in the first instance on the ‘primary

duties analysis [that] requires a court to objectively examine an employee’s actual job function, not her title, in determining whether she is properly classified as a minister.’ ”) (citations omitted); Coulee Catholic School v. Labor & Indus. Review Comm’n, 768 N.W.2d 868, 881 n.16 (Wis. 2009) (“The focus ... should be on the function of the position, not the title or a categorization of job duties.”); Pardue v. Center City Consortium Schs. of the Archdiocese of Washington, Inc., 875 A.2d 669, 675 (D.C. Ct. App. 2005) (“ ‘inquiry focuses on the function of the position at issue and not on categorical notions of who is or is not a minister.’ ”) (citations and internal quotations omitted); EEOC v. Catholic Univ., 83 F.3d 455, 463 (D.C. Cir. 1996) (“the ministerial exception encompasses all employees of a religious institution, whether ordained or not, whose primary functions serve its spiritual and pastoral mission.”).

To be sure, “[t]he functional consensus has held up over time[,]” and the Court’s decision in Hosanna-Tabor “should not be read to upset this consensus.” 565 U.S. at 202, 204 (Alito, J., concurring with whom Kagan, J., joined). As Justice Alito noted:

Because virtually every religion in the world is represented in the population of the United States, it would be a mistake if the term “minister” or the concept of ordination were viewed as central to the important issue of religious autonomy that is presented in cases like this one. Instead, **courts should focus on the function performed by persons who work for religious bodies.**

Id. at 198 (emphasis added). Therefore, after Hosanna-Tabor, the majority of courts that have considered the ministerial exception have continued to apply a functional analysis when determining whether an employee qualifies as a ministerial employee, while still applying the four Hosanna-Tabor factors.<sup>28</sup>

For example, in Cannata v. Catholic Diocese of Austin, 700 F.3d 169 (5th Cir. 2012), the “first opportunity for the [Fifth Circuit] to address the ministerial exception in light of Hosanna-Tabor[.]” id. at 170, the Fifth Circuit ruled that the exception applied to the music director at a Catholic Church, despite his argument “that he merely played the piano at Mass and that his only responsibilities were keeping the books, running the sound system, and

---

<sup>28</sup> Both before and after Hosanna-Tabor, while using a functional approach, many courts focused on the employee’s “primary duties.” See e.g., Petruska, 462 F.3d at 304 n.6 (“As a general rule, an employee will be considered a minister if her primary duties include ‘teaching, spreading the faith, church governance, supervision of a religious order, or supervision of participation in religious ritual and worship.’”) (citations omitted); Shaliesabou, 363 F.3d at 306 (applying “the same primary duties test” that is used when determining the ministerial exception in Title VII cases as in claims brought under the Fair Labor Standards Act). Further, at least one court has observed that in Hosanna-Tabor “the Court did seem to cast considerable doubt on the ‘primary duties’ test as used by the Sixth Circuit below. Importantly, the ‘primary duties’ test has been prominent throughout the federal circuits with a few circuits now shifting away.” Kirby, 426 S.W.3d at 606 (citations and footnote omitted). However, as explained below, whether one examines DeWeese-Boyd’s “primary duties” or her “functions” while employed at Gordon, one reaches the same conclusion: she was not a “minister.”

doing custodial work, none of which was religious in nature.” *Id.* at 177. According to the Fifth Circuit, “[a]pplication of the exception” did not “depend on finding that Cannata satisfie[d] the same considerations that motivated the [Supreme Court] to find that [the plaintiff in Hosanna-Tabor] was a minister within the meaning of the exception.” *Id.* Instead, it was “enough” that Cannata “played an integral role in the celebration of Mass and [by] playing piano during services, [he] furthered the mission of the church and helped convey its message to the congregants.” *Id.* In reaching this conclusion, the Fifth Circuit pointed out that it was important not to “overemphasize” the “performance of secular duties.” *Id.* (rejecting the idea that the ministerial exception should be limited to those who perform exclusively religious functions) (citing Hosanna-Tabor, 565 U.S. at 193).

With few exceptions, later decisions continued to follow this functional-type approach. In Fratello v. Archdiocese of N.Y., 863 F.3d 190 (2nd Cir. 2017), the Second Circuit’s first occasion to address the ministerial exception after Hosanna-Tabor, *id.* at 192, the former principal of a Roman Catholic school alleged she was terminated from her position based on gender discrimination and retaliation. *Id.* at 192. In applying the exception, the Second Circuit stated, “Hosanna-Tabor instructs only ... what [the courts] might take into account as relevant ... it neither limits the inquiry to [the four considerations identified] nor requires their application in every case.” *Id.* at 204-205. Instead, according to the Second Circuit, “courts should focus primarily on the function[s] performed by persons who work for religious bodies,” as “[i]t is

the relationship between the activities the employee performs for her employer, and the religious activities that the employer espouses and practices, that determines whether employment-discrimination laws implicate the religious group's First Amendment rights[.]” *Id.* (quotations and citations omitted). The Second Circuit ruled that the plaintiff was a minister because, “[a]lthough her formal title was not inherently religious, ... the record clearly establishe[d] that she held herself out as a spiritual leader of the school, and that she performed many significant religious functions to advance its religious mission.” *Id.* at 192.

The SJC likewise used the functional approach in Temple Emanuel. In that case, the SJC applied the ministerial exception to prohibit the plaintiff's age discrimination claim even though “she was not a rabbi, was not called a rabbi, and did not hold herself out as a rabbi.” 463 Mass. at 486. According to the SJC, “the ministerial exception applie[d] to the school's employment decision regardless whether [the plaintiff was] ... called a minister or h[eld] any title of clergy” because “an employee's title is not determinative of ... status as a minister, and there is consensus among the courts that a minister is defined by ... function, rather than ... title.” *Id.* (citing Hosanna-Tabor, 565 U.S. at 206 (Alito, J., concurring, with whom Kagan, J., joined)).

Examination of a post-Hosanna-Tabor case in which a court applied a functional approach, but hewed closely to the Hosanna-Tabor factors is also instructive. In Herx v. Diocese of Fort Wayne-South Bend Inc., 48 F. Supp. 3d 1168 (N.D. Ind. 2014), “[t]he Diocese of Fort Wayne-South Bend, Inc. and St.

Vincent De Paul School declined to renew [the plaintiff's] teaching contract after learning that she was undergoing in vitro fertilization in an effort to become pregnant." Id. at 1170. The plaintiff sued the Diocese and school, claiming sex discrimination. Id. The defendants argued on summary judgment that the ministerial exception applied because:

[Although] [the plaintiff] wasn't employed as a religion teacher, she qualified as a "minister" because the Church, the School, and the parents of students at the school expected and relied on her to perform the function of a minister every day while teaching her students. According to the Diocese, **even [the plaintiff] agreed that she was to provide students with an example of how to live their faith to share her devotion to God whenever she could. These functions, the Diocese claims, go to the heart of what makes St. Vincent de Paul School a Catholic school.**

Id. at 1176 (emphasis added).

Applying Hosanna-Tabor, the court in Herx disagreed with the defendants and ruled that the plaintiff was not a "minister" for purposes of the ministerial exception. Id. at 1177. In so ruling, the court stated:

The Diocese hasn't shown that [the plaintiff's] teaching qualifications or job responsibilities in any way compare to [the teacher in Hosanna-Tabor]'s situation. Nothing in the summary judgment record suggests that [the plaintiff] was a member of the clergy of the Catholic Church. [The plaintiff] has never led planning for a Mass,

hasn't been ordained by the Catholic Church, hasn't held a title with the Catholic Church, has never had (and wasn't required to have) any religious instruction or training to be a teacher at the school, has never held herself out as a priest or minister, and was considered by the principal to be a "lay teacher." The religion teachers for the Diocese schools have different contracts than the nonreligion teachers and are required to have religious education and training. For example, [ ] a religion teacher in the Diocese, has a Master's Degree in Theology. Labeling [the plaintiff] a "minister" based on her attendance and participation in prayer and religious services with her students, which was done in a supervisory capacity, would greatly expand the scope of the ministerial exception and ultimately would qualify all of the Diocese's teachers as ministers, a position rejected by the Hosanna-Tabor Court.

Id. at 1177.

**B. The Totality Of The Circumstances Approach In Determining Whether An Employee Qualifies As A "Minister"**

Since Hosanna-Tabor, while still focusing on the employee's functions, some courts have taken a "totality of the circumstances" approach when determining if an employee qualified as a minister. One such court was the Seventh Circuit in Grussgott, which was that court's "first opportunity ... to address the ministerial exception in light of Hosanna-Tabor." 882 F.3d at 658.

There, the plaintiff's job titles ("grade school teacher" and/or "Hebrew teacher") and her use of those titles, where she neither held herself out "as an ambassador of the Jewish faith, nor ... understood that her role would be perceived as a religious leader[,]” did not necessarily support a finding that the teacher was a minister under Hosanna-Tabor. *Id.* at 659. Nevertheless, the Seventh Circuit decided the teacher was a minister because, among other reasons, the school “expected its Hebrew teachers to integrate religious teachings into their lessons[,]” *id.* at 559; the teacher’s resume “tout[ed] significant religious teaching experience,” which the principal identified as a “critical” factor in deciding to hire her, *id.*; “the substance of [the teacher’s] title as conveyed to her and as perceived by others entail[ed] the teaching of the Jewish religion to students[,]” *id.* at 660; and, “[the teacher] performed ‘important religious functions’ for the school[ ]” because she “taught her students about Jewish holidays, prayer, and the weekly Torah readings [and] she practiced the religion alongside her students by praying with them and performing certain rituals.” *Id.* at 660 (internal citation omitted).

In reaching the conclusion that the teacher was a minister, the Seventh Circuit noted that “at most two of the four Hosanna-Tabor factors [we]re present.” *Id.* at 661. However, the court observed, “the same four considerations [outlined in Hosanna-Tabor] need not be present in every case involving the [ministerial] exception,” *id.* at 658, and cautioned against “drawing a distinction between secular and religious teaching ... when doing so involves the government challenging a religious institution’s honest assertion that a

particular practice is a tenet of its faith.” Id. at 660. The Seventh Circuit ultimately concluded that “the Supreme Court’s decision [in Hosanna-Tabor was] to impose, in essence, a totality-of-the-circumstances test.” Id. at 661.

**C. Strict Adherence To The Hosanna-Tabor Factors In Determining Whether An Employee Qualifies As A “Minister”**

Given the functional approach accepted by the majority of jurisdictions and, in particular, by the SJC in Temple Emanuel, DeWeese-Boyd’s argument for strict adherence to the four factors announced in Hosanna-Tabor, and her reliance on Biel v. St. James Sch., 911 F.3d 603 (9th Cir. 2018), in support of that argument are unpersuasive.

The Ninth Circuit’s decision in Biel appears to be the only decision of a Federal Circuit Court that has broken from the functional approach traditionally applied in applying the ministerial exception and rigidly applied the four factors of Hosanna-Tabor. In that case, the plaintiff was a fifth grade teacher at a Catholic elementary school.<sup>29</sup> Id. at 605. Her duties included praying with her students twice daily, taking her students to monthly Mass, and teaching them about the Catholic faith. Id. at 605. Nevertheless, the Ninth Circuit concluded that the plaintiff was not a minister because, compared to the teacher in Hosanna-Tabor, the plaintiff had a less

---

<sup>29</sup> “Biel d[id] not dispute that [the defendant school], as a part of the Roman Catholic Archdiocese of Los Angeles, [wa]s the type of religious organization that could potentially invoke the ministerial exception as a defense.” Id. at 607.

religious title and background, received less religious training, had a smaller role in teaching religion, and did not hold herself out as a minister. *Id.* at 608-610. The Ninth Circuit reasoned that, even though the plaintiff “taught lessons on the Catholic faith[, and] incorporated religious themes and symbols into her overall classroom environment and curriculum, .. this shared characteristic alone” was not sufficient to confer ministerial status. *Id.* at 609.

Since Biel, the Ninth Circuit has faced criticism for this decision. Most notably, in June 2019, after it declined to rehear Biel en banc, nine members of the Ninth Circuit issued a dissent stating, in part:

By declining to rehear this case en banc, our court embraces the narrowest construction of the First Amendment’s “ministerial exception” and splits from the consensus of our sister circuits that the employee’s ministerial function should be the key focus .... The panel majority’s approach conflicts with Hosanna-Tabor, decisions from our court and sister courts, decisions from state supreme courts, and First Amendment principles. And it poses grave consequences for religious minorities ... whose practices don’t perfectly resemble the Lutheran tradition at issue in Hosanna Tabor.

Biel v. St. James Sch., 926 F.3d 1238, 1239–1240 (9th Cir. 2019) (Nelson, J., dissenting from denial of rehearing *en banc*, with whom Bybee, J., Callahan, J., Bea, J., M. Smith, J., Ikuta, J., Bennett, J., Bade, J., and Collins, J. joined); *see also* Sterlinski v. Catholic Bishop of Chicago, 934 F.3d 568, 570 (7th Cir. 2019) (criticizing Biel for “disregarding what Biel’s

employer (a Roman Catholic school) thought about its own organization and operations,” and, instead, asking “how much like [the plaintiff in Hosanna-Tabor] a given plaintiff is, rather than whether the employee served a religious function”). As such, this Court will not follow the minority approach adopted by the Ninth Circuit and advanced by DeWeese-Boyd.

**D. Application Of The Kirby Framework In Determining Whether An Employee Qualifies As A “Minister”**

In a pair of decisions that addressed the ministerial exception for the first time after Hosanna-Tabor, the Supreme Court of Kentucky refused to adopt an “inelastic approach” and, like the Seventh Circuit in Grussgott, ruled that “[t]he legal determination of a minister, instead, requires a review of the totality of the circumstances surrounding the plaintiff’s employment.” Kant v. Lexington Theol. Seminary, 426 S.W.3d 587, 591 (Ky. 2014). More significantly, the Supreme Court of Kentucky provided specific guidance for trial courts to use in determining the ministerial status of an employee after Hosanna-Tabor.

Acknowledging that the Hosanna-Tabor Court “did not provide[ ] any substantial guidance on how a court should determine if an employee is a minister for ministerial exception purposes,” id., the Court stated, “that a trial court should undergo the following review” in making such a determination:

When considering the formal title given, a trial court should weigh whether the title is inherently, exclusively, or primarily religious. The consideration of the substance reflected in

the title **should include the duties and responsibilities associated with the title.** The trial court, in looking to the associated duties and responsibilities, may look at whether they carried substantial religious significance, involved supervision or participation in religious ritual and worship, or spreading the tenets or doctrine of the faith. The employee's own use of the title should include consideration of whether the position involved, expected, or required proselytizing on behalf of the religious institution. Or, did the employee use the title in a manner that would indicate to the members of the particular faith community or to the public that he was a representative of the religious institution authorized to speak on church doctrine. Finally, **consideration of the important functions** performed for the religious institution should involve a review of **whether those functions were essentially liturgical, closely related to the doctrine of the religious institution, resulted in a personification of the religious institution's beliefs, or were performed in the presence of the faith community.**

Id. at 591–592 (citing Kirby v. Lexington Theol. Seminary, 426 S.W.3d 597, 613-614 (Ky. 2014) (emphasis added)).<sup>30</sup> “If, after the consideration of these factors, in light of the totality of the circumstances, the trial court finds an employee is a minister under the law, the religious institution is

---

<sup>30</sup> The Supreme Court of Kentucky issued the decisions in Kant and Kirby on the same day.

entitled to the benefit of the ministerial exception.” Kirby, 426 S.W.3dat 614.

After exhaustive consideration of cases applying Hosanna-Tabor, and reported decisions prior to Hosanna-Tabor, this Court believes that the framework announced by the Supreme Court of Kentucky in Kirby is an excellent, thoughtful, pragmatic approach to determining whether an employee qualifies as a “minister” after Hosanna-Tabor. To be sure, as the above highlighted portion of the Kirby framework illustrates, it carries on the functional approach in many ways. Moreover, the Kirby framework appears to be mindful of the overarching purpose of the ministerial exception: avoidance of governmental interference in the internal decision-making by a religious institution regarding the retention, promotion, and hiring of “any ‘employee’ who leads [it], conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.” Hosanna-Tabor, 565 U.S. at 199 (Alito, J., concurring with whom Kagan, J., joined). As such, this Court will adopt the Kirby framework here.

In Kirby, the Supreme Court of Kentucky considered whether a tenured professor of a seminary, “teaching Christian social ethics for fifteen years,” was a minister for purposes of the exception. Id. at 603. After ruling that “it is beyond question that the [defendant] Seminary exists as a religious institution under the ministerial exception[.]” id. at 609, the Court in Kirby turned its attention to “[t]he determination of whether [the plaintiff] [wa]s a ministerial employee, [which] [wa]s much more complicated than the determination of the Seminary’s

religious-institution status.” Id. at 611. The Court ruled that the fact that “[the plaintiff] [wa]s not ordained ... [wa]s not dispositive. Given [his] extensive involvement in the Seminary’s mission, religious ceremonies, and the subject matter of Kirby’s teaching, it [wa]s clear that [the plaintiff] [wa]s a ministerial employee.” Id. at 611.

In reaching the conclusion that Kirby was a minister, the Court considered the following: (a) in hiring Kirby, “the Seminary ... ‘issued a call to carry out [his] ministry by serving as Instructor of Church and Society[,]’ ” id. at 611; (b) “Kirby was tasked with carrying out the mission of the Seminary to prepare students for the ministry of Jesus Christ[,]” id.; (c) “Kirby’s teaching focused on ‘helping students understand what the basic socio-ethical issues [we]re and the nature of the Christian (or Christlike) response’ ” and “emphasiz[ed] ‘Christian methods of moral judgment’ [as an] important aspect[ ] of his professorial role[,]” id.; (d) “Kirby began each class with a voluntary participatory prayer regarding the social issues and injustices he taught about[,]” id. at 611–612; and, (e) “Kirby participated in chapel services, convocations, faculty retreats, and other religious events [and he] preached on numerous occasions at both his own [ ] congregation and various Christian Church (Disciples of Christ) congregations.” Id.

In sum, after consideration of the above in light of the framework previously announced, the Court:

[C]onclude[d] that Kirby [wa]s closely connected to the tenets of the faith espoused by the Seminary and actively involved in the promotion of the

Seminary's mission. As a professor at an ecumenical Seminary, instructing on Christian principles, Kirby serve[d] as a representative of the Seminary's message. Kirby ha[d], on multiple occasions, served as the Seminary's official representative, ambassador, and voice to the faithful.

...

Kirby satisfie[d] most of the factors listed above. He gave sermons on multiple occasions, served communion, taught classes on Christian doctrine, opened class with prayer each day, affirmatively promoted students' development in the ministry, and served as a representative—a literal embodiment—of the Seminary at events on multiple occasions. The record is clear that Kirby conducted worship services, important religious ceremonies and rituals, and acted as a messenger of the Seminary's faith. He [wa]s most certainly a ministerial employee of the Seminary.

Id. at 612–613 (footnote omitted), 614.

Most importantly for the case here, the Kirby Court:

[P]ause[d] to emphasize the link between the employee's title or conduct and the actual tenets or doctrine of the religious institution. **It is important that as a ministerial employee, the employee be involved with the tenets of the faith.** As detailed in Kant, **an employee simply engaging in religious discourse cannot serve as a minister of the religious institution without involving himself in**

**the doctrine or tenets of the faith. Simply promoting the mission of the religious institution alone is not sufficient.**

Id. at 613 n.63 (emphasis added).

In Kant, decided the same day as Kirby, the Supreme Court of Kentucky was “present[ed] [with] the question [of] whether the ministerial exception categorically applie[d] to all professors employed by seminaries.” Kant, 426 S.W.3d at 588. In that case, “Laurence Kant [ (“Kant”) ] was a tenured Professor of Religious Studies at Lexington Theological Seminary, employed to teach courses on several religious and historical subjects. The Seminary terminated his employment, and Kant challenged the legitimacy of his termination by filing [an] action for breach of contract.” Id.

The Court in Kant “h[e]ld that Kant was not a ministerial employee of the Seminary.” Id. at 589. In doing so, the Court “reject[ed] a categorical application of the ministerial exception that would treat all seminary professors as ministers under the law. Each case must be reviewed on the totality of its facts as [it] outlined in Kirby.” Id. “[Professor] Kant, as opposed to Kirby, **did not participate in significant religious functions, proselytize, or espouse the tenets of the faith on behalf of his religious institutional employer.**” Id. (emphasis added).

Faculty at the Seminary in Kant (i.e., the same seminary as in Kirby) were expected to adhere to a Faculty Handbook, which “stated the fundamental responsibility of faculty ‘shall be to uphold the purpose of [the] Seminary to prepare faithful leaders

for the Church of Jesus Christ and, thus, to strengthen the Church's participation in God's mission for the world.' ” Id. at 589–590. Further, “although there was no ordination requirement, faculty were expected ‘to serve as models for ministry[,]’ ” id. 590, and “were ‘expected’ but not required to participate in Seminary worship services and convocations.” Id. Moreover, as the Court observed:

In the circumstances of the instant case, we find it important to emphasize the connection between the religious institution's employee and the doctrine or tenets of the religious institution. A minister, in the commonly understood sense, has a very close relationship with doctrine of the religious institution the minister represents. The members of the congregation or faith community view a minister as one who is, among other things, the face of the religious institution, permitted to speak for the religious institution, the embodiment of the religious institution's tenets, and leader of the religious institution's ritual. Kant did none of these things.

Id. at 592.

Upon becoming a tenured professor, Kant's title was “Associate Professor of the History of Religion.” Id. at 592. During his employment, Professor Kant participated in chapel services, was a scripture reader at two ordination ceremonies, once served as a greeter for a communion service, once gave an ordination sermon, once gave the benediction at the student orientation chapel service, served as Chair of the Convocation Committee for two years, and gave the

invocation at two faculty meetings. Id. at 593. “Kant acknowledge[d] his participation in Seminary events, including convocations and chapel services. But[,] he claim[ed] he never did so as a Christian, rather, as a teacher and Jew.” Id. “In light of Kant’s participation in the Seminary and its mission,” the Court turned “to the Kirby factors [to] determine if Kant qualifie[d] as a minister,” id., and held that Professor Kant was not a minister for the purposes of the ministerial exception. Id. at 596.

In so holding, the Kant Court stated: (a) “Kant’s formal titles given by the Seminary were not inherently, exclusively, or primarily religious,” although “serving as a professor of [religious studies and history] inherently involves religion, ... [b]ut there [wa]s no indication that the title ha[d] any significance to the particular religious views of the Seminary[.]” id.; (b) “the substance reflected in Kant’s title similarly indicate[d] an absence of any connection to the faith of the Seminary[.]” id. at 594; (c) although, “the duties and responsibilities associated with Kant’s title include[d] the promotion of the Seminary’s mission and participation in Seminary events ... these duties alone [we]re [not] enough to label Kant a ministerial employee[.]” because his “role did not ‘involve, expect, or require proselytizing on behalf of the religious institution[.]’ ” id.; (d) “Kant did not, in the context of the Seminary’s strong connection with the doctrine of the Christian Church (Disciples of Christ), perform any ‘important functions’ for the Seminary[.]” id.; and, (e) “the functions performed by Kant were not liturgical, did not personify the Seminary’s beliefs, and were not

performed in the presence of the faith community.”<sup>31</sup>  
Id.

**E. Application Of The *Hosanna-Tabor* Factors, The *Kirby* Framework, And The Functional Approach In This Case**

In applying the Kirby framework (which necessarily involves the application of the Hosanna-Tabor factors) and the functional approach outlined above, this Court concludes that DeWeese-Boyd does not qualify as a ministerial employee for several reasons. First, notwithstanding the numerous aforementioned provisions in Gordon College’s Faculty Handbook, other governing documents,<sup>32</sup> and other places in the record mandating that faculty members support and promote Gordon’s evangelical Christian doctrine and mission (e.g., expecting faculty members to be “both educators and ministers to Gordon’s students,” to “approach[] [their] educational tasks from within the fixed reference points of biblical theism,” “to be fully prepared in all facets of their

---

<sup>31</sup> “As Kant admit[ed], as a practicing Jew, he [wa]s not licensed as Christian clergy or qualified to partake in or lead any Christian rites of worship. While an employee practicing a different religion than the religious institutional employer [wa]s not dispositive, it [wa]s indicative of the employee’s relationship to the tenets of the faith espoused by the Seminary.” Id.

<sup>32</sup> In addition to other governance documents, such as the Social Work Handbook and the Memorandum of Understanding, there are numerous instances in the record where DeWeese-Boyd acknowledged Gordon College’s expectation that she would integrate the Christian faith into her teaching. These include the 2002 cover letter accompanying her first integration paper and her 2009 application for tenure and paper entitled “Reflections on Christian Scholarship.”

tasks as Christian teachers and advisors, both inside and outside the classroom,” and, “to strive to engage students in their respective disciplines from the perspective of the Christian faith and to teach with accuracy and integrity.”), “[t]he simple promotion of a religious institution’s mission, alone, provides little insight into whether the duties or responsibilities undertaken by the employee ‘carried substantial religious significance.’” Kant, 426 S.W.3d at 594 (footnote omitted). To be sure, “mission promotion in no way indicates whether the employee’s duties or responsibilities involved ‘supervision or participation in religious ritual and worship[ ] or spread[ing] the tenets or doctrine of the faith.’ [Instead,] [t]he conduct said to be in promotion of the religious institution’s mission must be linked to the tenets of the religious institution’s faith.” *Id.* (citations and footnotes omitted). Here, although DeWeese-Boyd was expected to integrate the principles and concepts that underlie the Christian evangelical tradition with her teaching, she had no religious duties and did not actively promote the tenets of evangelical Christianity.

Second, DeWeese-Boyd’s “role did not ‘involve, expect, or require proselytizing on behalf of [Gordon College].’” *Id.* Based on the record before the Court, the Court concludes that Gordon’s requirement of the integration of faith and teaching by a social work professor did not involve any expectation that she would actively proselytize or preach religious tenets or doctrine to the students in her classes.

Third, DeWeese-Boyd did not “use h[er] role in any way that would indicate to the members of the faith [s]he was a ‘representative of the religious institution authorized to speak on church doctrine.’”

Id. She neither held a ministerial title nor held herself out as a minister. Rather, like Professor Kant, DeWeese-Boyd’s “professorial role[, at most,] exemplifie[d] the distinction between ‘teaching about religion’ and ‘the teaching of religion.’ [In fact,] [t]he record does not evince any example of [DeWeese-Boyd] holding h[er]self out as an employee authorized to speak on church doctrine.” Id. 594–595.

Fourth, DeWeese-Boyd did not perform any important religious functions for Gordon College. In making this determination when applying the Kirby framework, the Court “consider[s] whether the functions performed by [DeWeese-Boyd] ‘were essentially liturgical, closely related to the doctrine of the religious institution, resulted in a personification of the religious institution’s beliefs, or were performed in the presence of the faith community.’” Id. at 595. Even if one assumes DeWeese-Boyd may have “dealt closely with religious texts, biblical languages, and scriptural interpretations[,]” (which would be stretching the summary judgment record before this Court) id., and may even have been, in a general sense, “a ‘source of religious instruction,’” id.; DeWeese-Boyd “did not play ‘an important role in transmitting [Gordon’s] faith to the next generation.’” Id. Other than attending on-site chapel and local church services with her students, on an unknown number of occasions, DeWeese-Boyd performed almost no liturgical or ecclesiastical functions for Gordon, especially when compared to the functions performed by Professor Kant and teachers in other cases applying the ministerial exception. See e.g., Herx, 48 F. Supp. 3d at 1176–1177. She was not responsible for leading students in prayer or

devotional exercises; she did not lead chapel services, or even select liturgy, hymns, or other content for chapel services; she did not teach religion or the Bible; and, she did not play a particular role as a minister or spiritual leader.

In sum, although DeWeese-Boyd had a seminary degree when hired, she did not have a religious title at Gordon,<sup>33</sup> she did not represent herself as a minister, she did not play an integral (or any) role in religious services, she did not convey Christian doctrine to the Gordon community, she did not lead her students in prayer, and she did not perform any religious functions. Although she was responsible for integrating the Christian evangelical faith into her teaching and advancing Gordon College's distinctively Christian perspective and worldview, "[t]he primary focus under the law is on the nature of the particular employee's work for the religious institution." Kant, 426 S.W.3d at 595. DeWeese-Boyd's work did not make her a minister for purposes of the ministerial exception.<sup>34</sup> See Richardson v. Northwest Christian Univ., 242 F. Supp. 3d 1132, 1145 (D. Or. 2017) (ministerial exception did not apply where "plaintiff's title, assistant professor of

---

<sup>33</sup> Referring to faculty members in passing as "ministers" in the Faculty Handbook does not make them ministerial employees for purposes of the exception.

<sup>34</sup> The Court recognizes that, as a religious institution, Gordon College has the right to shape its own faith and mission through its appointments, and a Court should not entangle itself in these ecclesiastical decisions. However, the law is clear that antidiscrimination and other laws apply to decisions by religious institutions that do not involve ministers, such as DeWeese-Boyd.

exercise science, was secular”; “plaintiff did not undergo any specialized religious training”; “although there [wa]s ample evidence plaintiff held herself out as a Christian, there [wa]s no evidence she held herself out as a minister”; and, although “plaintiff performed some important religious functions in her capacity as a professor[,] [and] [s]he was expected to integrate her Christianity into her teaching and demonstrate a maturing Christian faith[,]” her “religious function was wholly secondary to her secular role: she was not tasked with performing any religious instruction and she was charged with no religious duties such as taking students to chapel or leading them in prayer.”); Bohnert v. Roman Catholic Archbishop of San Francisco, 136 F. Supp. 3d 1094, 1114 (N.D. Cal. 2015) (Catholic high school biology teacher was not a minister where, although she spent one-fifth of her time performing ministry duties, the duties were mostly logistical rather than providing actual spiritual or religious guidance); Braun v. St. Pius X Parish, 827 F. Supp. 2d 1312, 1319 (N.D. Okla. 2011) (teacher of secular subjects was not a minister; although plaintiff had to “‘adopt and embrace the concept that teachers are ministers of the Catholic faith,’” plaintiff was required “to ‘teach and act in accordance with the precepts of the Catholic Church’ and to ‘aid in the Christian formation of students,’” the defendants failed to “articulate[ ] specific responsibilities or actions that might be considered ministerial,” such as leading students in prayer); Redhead v. Conference of Seventh-Day Adventists, 440 F. Supp. 2d 211, 221 (E.D. N.Y. 2006) (teacher was not a minister where her “teaching duties were primarily secular; those religious in nature were

limited to only one hour of Bible instruction per day and attending religious ceremonies with students only once per year.”); Guinan v. Roman Catholic Archdiocese of Indianapolis, 42 F. Supp. 2d 849, 852 (S.D. Ind. 1998) (teacher was not a minister, notwithstanding that she “did participate in some religious activities as a teacher at All Saints, but it cannot be fairly said that she functioned as a minister or a member of the clergy”); Geary v. Visitation of Blessed Virgin Mary Parish Sch., 7 F.3d 324 (3d Cir. 1993) (refusing to apply the ministerial exception to a lay teacher at a Catholic church school, notwithstanding the teacher’s general employment obligation to be a visible witness to the Catholic Church’s philosophy and principles); DeMarco v. Holy Cross High Sch., 4 F.3d 166, 172 (2d Cir. 1993) (refusing to apply the ministerial exception to a math teacher at a Catholic high school because the relationship between employee and employer was not “so pervasively religious” that it was impossible to engage in an employment discrimination inquiry without serious risk of offending the Establishment Clause).

At bottom, “[i]f [DeWeese-Boyd] was a minister, it is hard to see how any teacher at a religious school would fall outside the exception.” Richardson, 242 F. Supp. 3d at 1145. As such, Defendants’ Motion is **DENIED** and Plaintiff’s Cross-Motion is **ALLOWED**.

### **ORDER**

For the reasons stated above, it is hereby **ORDERED** that:

1. Defendants' Motion For Summary Judgment On The First Amendment Ministerial Exception (Paper No. 33) is **DENIED**.

2. Plaintiff's Cross-Motion On The First Amendment Ministerial Exception (Paper No. 33.2) is **ALLOWED**.

3. The affirmative defense of the ministerial exception is **HEREBY DISMISSED**.

104a

CONFIDENTIAL



To: Margie DeWeese-Boyd  
From: Faculty Senate  
Re: Application for Promotion  
Date: December 15, 2016

The Senate has carefully reviewed and discussed all of the materials submitted for your promotion and tenure review. It is with great pleasure that we are able to inform you that we have passed along a recommendation to the Provost, by unanimous vote, that you be promoted to full professor. We found you to be meritorious in teaching and institutional service and your scholarship was assessed at the expected level.

The portfolio you prepared, along with supporting documentation that included letters of support from both departmental and non-departmental colleagues, student classroom assessments, course syllabi, and samples of scholarly activity provided ample evidence that you have made considerable contributions to the Gordon community. The Senate appreciates the energy and vitality you bring as a faculty member.

In terms of your teaching effectiveness, the file demonstrates that you are a skilled educator who regularly reflects on and refines your teaching practices; including touching on matters ranging from overall course design and pedagogical strategy all the way down to the conduct of individual class sessions. You have a well-developed philosophy of teaching that

creates a rigorous and challenging classroom environment that encourages critical thinking. Although the number of course/instructor evaluations were limited compared to the number that we normally review, we realize that this is a function of the significant administrative and practicum duties you carry for the department. Nonetheless, students routinely give you exemplary marks (on average 4.4 or higher on a 5-point scale) for the overall experience you deliver in the classroom. It was refreshing to learn that students see you working hard to create a safe, hospitable environment that encourages them to speak up in class. We also want to commend you for exploring new pedagogical techniques as a means to deepen your students' learning. Taking these risks can be worth the effort to become a more effective educator. It was wonderful to see comments by a colleague say, "The only regret we have with respect to Margie's teaching is that her current social work program responsibilities mean that students have limited opportunities to encounter her in the classroom." We concur.

In terms of your contributions to scholarship and professional activity, since your last promotion in 2004-05, it is clear you have broad academic interests. Your affiliation with nine professional organizations that span disciplines such as political science, social welfare, economic development, community organization, among others, is a testament to your breadth and desire for faithful Christian reflection to permeate real-world applications geared toward communal flourishing. In terms of productivity, the articles, book reviews, and professional conference presentations you have completed since your previous

promotion is on par with what we expect for a faculty member at this point in her career. We wish to acknowledge your excitement about pursuing research in a long standing area of interest you have had in intentional Christian communities. More importantly, we are encouraged to see that you have a plan in place for developing your future scholarship.

In the area of institutional service, we were encouraged to learn that when your department lost two of its members you stepped up to the plate and took on the position of Director of Social Work Practicum which involves the important tasks of developing new placement sites and becoming a liaison to community-based supervisors. One departmental colleague put it this way, "Margie's willingness to do all of this is hardly surprising, however, as it is wholly consistent with the spirit of sacrificial service to the social work program that she and others have long cultivated in the department." We acknowledge the work you invested in developing and now coordinating a minor in Sustainable Development. We were also heartened to learn that students use the minor to build a major in Sustainable Development through the Kenneth Pike's Honors Program. In addition to the minor you brought to Gordon, we also commend you for proposing and designing a sustainable agriculture program that delves into experiential exploration of topics such as community, sustainability and agriculture. We hope that in the near future you will be able to launch the program and see it flourish.

Overall, the Senate was impressed with your accomplishments. We are grateful for the excellent teaching, thoughtful scholarly work, and the

107a

significant contributions you have made. Although this will be your last promotion in rank at Gordon, we look forward to your continued development as a teacher, advisor, and scholar.

108a

CONFIDENTIAL



February 8, 2017

Dr. Margaret DeWeese-Boyd  
Department of Sociology and Social Work

Dear Margie,

The Faculty Senate recommend you for promotion, but after carefully reviewing your file. I chose not to forward that recommendation to President Lindsay and the Board of Trustees. However, I did provide President Lindsay with the Senate letter of support and your application for promotion. He concurred with my assessment. In light of that decision, I want to share with you some of the areas that inform my evaluation.

First, let me affirm you as a strong teacher. Your teaching evaluations are very high and the social work students sense your love for them and your desire to engage with them to deeper levels of understanding. This is clearly where you excel, and I would love to see you have more time in the classroom because you this is a strong area in your professional performance at Gordon.

The next topic relates to scholarly productivity. Your promotion to associate professor began in the 2004-2005 academic year. You published four peer-reviewed articles over the following three years, but your scholarly productivity has been limited to only a single publication since 2008. That does not reflect a sustained level of scholarship, and does not reach

acceptable levels of scholarly productivity for a Gordon faculty member, especially one who has been granted two sabbaticals during this time (fall of 2010 and fall of 2015). I had difficulty assessing your professional presentations because of the mixing of “participant” with “presenter” on your vita, but it appears that you have not made a professional presentation since 2013. I encourage you to get the full benefit of your last sabbatical and the manuscripts and projects that are in process and build a sustained track record of scholarship. This is essential for a faculty promotion at Gordon.

Beyond your need for greater scholarly productivity, I want to encourage you to make greater progress in your professionalism and institutional service. Let me offer three substantive evaluations. First, you have established a track record of initiating or seeking out institutional tasks. And when it is your idea or passion, you can make a meaningful contribution. An example would be the “listening retreat” you co-organized with Professor Elaine Phillips two years ago. That was a real benefit to all involved, and you were diligent with the planning and with the follow-through. But in other instances, you fail to follow through or demonstrate enough diligence to bring a project to completion. One example would be the sustainable agriculture semester proposal. The College has come close to moving forward on this proposal three times, but it failed each time due to lack of follow-through on your part. .

Second, you do not act with consistent professionalism, and this is essential for faculty members, particularly faculty leaders who achieve the rank of full professor. Let me mention a few

examples. All faculty are required to give a sabbatical presentation based on the research completed during their College-funded time away from the classroom. You neglected to complete this in a timely fashion as others did at the 2016 Fall Faculty Workshop. In addition, several colleagues on campus report a lack of responsiveness on your part. I have personally experienced this even as you applied for this promotion. I recently asked you to provide a list of publications with full publication information as well as the confirmed date of your last promotion. I got no response. (As an aside, your vita falls short of standards within academe. Faculty Senate and I both noticed that items on your vita were out of chronological order or were incomplete, and many things were lumped into one category. In addition, while reviewing your file, I noticed that a title to one of your published articles was incorrect. This points to a lack of professionalism that is expected of Gordon faculty.)

To be candid, lack of responsiveness has been seen in your institutional service as well. Last year, for instance, I asked (given your leadership role within the social work program) you to provide an alternative load staffing model for the social work department when I introduced a proposal based on other institutions. Many months later, I have yet to get one. And after I appointed Professor Ivy George as Director of Social Work (at your request), I found out that you had taken over the position without permission. The Provost and Dean of the Faculty make leadership appointments in consultation with the faculty. You acted without consulting either of us and, in the process, put the program at risk. There

are, of course, examples, where you act with great professionalism and courtesy to others. We are grateful for your service on the sustainability committee and the Pike program committee. At the same time, you appear unaware of significant gaps in your professional demeanor, and despite multiple overtures, you are unresponsive to requests for improvement.

Third, I would like to see growth in your broad commitment to the Gordon academic division through more sustained engagement. As a member of the Gordon faculty, often we have to take on work that contributes to the whole that is not necessarily our area of direct interest. In 2015 we hoped you would take leadership of the Pike committee for one semester because of the need for a social science representative and faculty chair, but you were not willing. This is part of a larger pattern of inconsistent contributions to the institution. When you want to do something, you are willing, but sometimes when the institution asks you to step up, you decline. This needs to change.

To conclude, as I have carefully reviewed your performance, I have concluded that your performance is meritorious in teaching, but not in scholarship or institutional service. As a result, I cannot support your application for promotion. That said, Margie, I believe you have much to contribute to the Gordon faculty, and I hope this detailed feedback will provide concrete ideas for improvement in the years ahead.

Sincerely,

Janel Curry  
Provost

COMMONWEALTH OF MASSACHUSETTS  
ESSEX, ss.  
SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

MARGARET DEWEESE-  
BOYD,

Plaintiff,

v.

GORDON COLLEGE, D.  
MICHAEL LINDSAY and  
JANEL CURRY,

Defendants.

Civil Action No.  
1777CV01367

**AMENDED CONSOLIDATED STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

The parties submit the following consolidated statement of the material facts pursuant to Mass. R. Civ. P. 56 and Superior Court Rule 9A. This amended statement of facts is being submitted pursuant to the Court's Order Regarding Consolidated Statement of Undisputed Facts, dated November 6, 2019.

**DEFENDANTS' STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

1. Gordon's Bylaws state, among other things, that the Commonwealth of Massachusetts chartered Gordon for the purpose of carrying on the faith-based educational work begun in 1889 by Gordon's founder,

the Reverend Adoniram Judson “A.J.” Gordon. Exh. 1—DEF000508.

**RESPONSE:** Denied. Gordon Exh. 1, DEF000508.

2. Gordon’s Restated Articles of Organization state, among other things, that Gordon was formed to provide instruction in the Bible and to prepare men and women for the duties of the Christian ministry and other special forms of Christian work. Exh. 2—DEF000531.

**RESPONSE:** Admitted.

3. Gordon’s Bylaws state, among other things, that Gordon is dedicated to the evangelical, biblical faith; scholarship that is integrally Christian; life guided by the teaching of Christ and the empowerment of the Holy Spirit; and application of biblical principles to transform society and culture. Exh. 1-- DEF000508.

**RESPONSE:** Admitted.

4. To ensure the College does not stray from its religious mission, its former Trustees issued a mandate that it transfer its assets to the American Bible Society, should it be determined that the College has not lived up to these religious principles. Exh. 3—DEF000530.

**RESPONSE:** Denied. Exh. 3, at DEF000529-30.

5. Gordon’s articulated mission is, among other things, to graduate men and women distinguished by intellectual maturity and Christian character. Exh. 4—DEF000054.

**RESPONSE:** Admitted.

6. Gordon's Faculty Handbook provides, among other things, that Gordon approaches its educational tasks from within fixed reference points of biblical theism. Exh. 4—DEF000055.

**RESPONSE:** Admitted.

7. Gordon's Faculty Handbook states that "[t]he principal ingredients of [Gordon's] academic profession of faith" include, *inter alia*, God, Creation, the integration of "faith and learning," and the "Christian Calling." Exh. 4—DEF000055-DEF000056.

**RESPONSE:** Admitted.

8. The Faculty Handbook states the Gordon community is challenged with, among other things, pursuing truth as revealed by God in Christ, Scripture and creation; developing a Christian worldview as a basis for both informed reflection and a reformation of culture; beginning a journey of lifelong, faith-directed learning; serving the Body of Christ with commitment, fidelity and self-sacrifice; acquiring a sense of vocation and calling before God and proclaiming and living out the gospel. Exh. 4—DEF000054-DEF000055.

**RESPONSE:** Admitted.

9. Gordon requires that all faculty, administrators, and trustees sign Gordon's Christian Statement of Faith, through which they acknowledge personal agreement that the "66 canonical books of the Bible as originally written were inspired of God" and that there "is one God, the Creator and Preserver of all things, infinite in being and perfection." Exh. 5—DEF000520; Exh. 6—DEF000521.

**RESPONSE:** Admitted.

10. Gordon community members must agree to abide by Gordon's Statement on Life and Conduct, which includes an affirmation of Christian faith. Exh. 4—DEF000058, DEF000085.

**RESPONSE:** Admitted.

11. Each Gordon trustee must sign the Statement of Faith, be a confessing Christian, an Evangelical who is actively worshipping and serving in a Christian church, and an individual who is committed to the enterprise of Christian higher education. Exh. 1—DEF000508.

**RESPONSE:** Admitted.

12. Gordon's Memorandum of Understanding requires employee applicants to acknowledge being a committed follower of Jesus Christ, confirm personal agreement with the Statement of Faith, and agree to abide by the Statement of Life and Conduct. Exh. 5—DEF000520.

**RESPONSE:** Admitted.

13. Gordon's President, D. Michael Lindsay, testified that all employees must be "committed to the evangelical mission of the institution. And journeys of faith are evaluated at the departmental level when employees are hired, and they annually reaffirm their commitment through the performance review process." Exh. 7—p. 18.

**RESPONSE:** Admitted.

14. President Lindsay testified that "[w]hen I interview a faculty member, I will liken joining Gordon College to joining a religious order ... and

being able to embrace the Christian mission and purpose of the institution.” Exh. 7—p 42.

**RESPONSE:** Denied. Exh. 7 (Lindsay Dep.), at 42.

15. Applicants for admission as students at Gordon must become familiar with the Life and Conduct Statement and Statement of Faith to ensure they will abide by the guidelines if admitted as a student, and must explain why they are interested in attending a distinctively Christian college like Gordon College, describe their faith in Jesus Christ, and certify that they have read and accept the Life and Conduct Statement and Statement of Faith. Exh. 8—DEF000500, DEF000504.

**RESPONSE:** Admitted.

16. President Lindsay testified that “[u]ndergraduates have to have a profession of Christian faith; they have to be able to talk about that in the admissions interview; and they also submit a spiritual reference in their application for admission. Exh. 7—pp. 15-16.

**RESPONSE:** Admitted.

17. All Gordon students are required to complete the College’s “Core Curriculum,” the purpose of which, among other things, is to foster knowledge of God’s character and purpose as revealed in Scripture and understood in the life of the Church and development of Christian character, moral discernment and civic responsibility. Exh. 9—DEF000525.

**RESPONSE:** Admitted.

18. The Core Curriculum's required classes include "Old Testament History, Literature and Theology"; "New Testament History, Literature and Theology"; and "Christian Theology." Exh. 9—DEF000526.

**RESPONSE:** Admitted.

19. President Lindsay testified that Gordon has mandatory "Christian Life and Worship" credits that students must earn each semester, which can be fulfilled by attending chapel services or other faith-based events on campus. Exh. 7—pp. 38-39.

**RESPONSE:** Admitted.

20. President Lindsay testified that the College has two chapels set aside for prayer and meditation--the A.J. Gordon Chapel and the Bethel Chapel. Exh. 7—pp. 23-24.

**RESPONSE:** Admitted.

21. President Lindsay testified that the College has on display throughout the campus religious art, Bible verses, and Christian artifacts, and it plays Christian music around campus. Exh. 7—p. 24.

**RESPONSE:** Admitted.

22. Gordon's Board of Trustees approved the following statement:

The Board of Trustees of Gordon College of Theology and Missions officially records the absolute loyalty of the College to the great evangelical doctrines of the Deity of Christ, the Only-begotten Son of God; his miraculous Birth; his sinless Life; his vicarious Death; his bodily Resurrection; his triumphal Return;

the Holy Spirit is the third Person of the Trinity; and the Bible as the supernaturally inspired word of God;--and in accepting the confidence and the gifts of evangelical Christians they hereby pledge the College to such loyalty as its permanent policy, and agree that the Trustees will now and hereinafter hereafter engage or retain as regular officers, professors or instructors (sic) only such persons as a firm genuine loyalty to these doctrines. Exh. 3—DEF000530.

**RESPONSE:** Admitted.

23. Gordon's Faculty Handbook states, among other things, that all professors are expected to promote understanding of their disciplines from the perspectives of the Christian faith. Exh. 4—DEF000087, DEF000060.

**RESPONSE:** Admitted.

24. The Faculty Handbook states, among other things, that Gordon professors are expected to be fully prepared in all facets of their tasks as Christian teachers and advisors, both inside and outside the classroom; and to strive to engage students in their respective disciplines from the perspectives of Christian faith. Exh. 4—DEF000087.

**RESPONSE:** Admitted.

25. The Faculty Handbook states, among other things, that one of the distinctives of Gordon College is that each member of faculty is expected to participate actively in the spiritual formation of its students into godly, biblically-faithful ambassadors for Christ. Exh. 4—DEF000113.

**RESPONSE:** Admitted.

26. The Faculty Handbook states, among other things, that in the Gordon College context, faculty members are both educators and ministers to its students. Exh. 4—DEF000113. This language was adopted and governed faculty in October, 2016, prior to the decision by the College not to promote the Plaintiff to full professor. Exh. 4—DEF000113.

**RESPONSE:** Admitted.

27. The Faculty Handbook states, among other things, that “integration” of faith and learning includes the professor’s ability to help students make connections between course content, Christian thought and principles, and personal faith and practice; and encourage students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection. Exh. 4—DEF000114-DEF000115.

**RESPONSE:** Admitted.

28. Gordon’s Faculty Handbook states, among other things, that among the tasks of the Christian educator, none is more important than that which seeks the integration of faith, leaning and living. Exh. 4—DEF000053.

**RESPONSE:** Admitted.

29. Gordon conducted seminars for professors concerning the integration of faith and learning that are identified in Exhibit 10. Exh. 10—DEF001906-DEF001907.

**RESPONSE:** Admitted.

30. The integration of faith and learning factors into performance reviews, promotions, and applications for tenure for all Gordon faculty members. Exh. 4—DEF000093-DEF000094, DEF000097-DEF000098.

**RESPONSE:** Denied. Exh. 4, at DEF000093-DEF000094, DEF000097-DEF000098.

31. Gordon utilizes “Vision Day” for faculty, at which Gordon “commissions” new and current faculty through participation in a worship service, prayer and dedication. Exh. 7—pp. 170-171; Exh. 11—DEF004117-DEF004119.

**RESPONSE:** Admitted.

32. President Lindsay testified that Gordon’s professors are “Christian educators” who are expected by the College to “transmit, carry, and advance the Christian mission through teaching, scholarship and service.” Exh. 7—p. 34.

**RESPONSE:** Denied. Exh. 7, at 34; Exh. 31 (Lindsay Dep.) at 80.

33. President Lindsay testified that professors are required to “profess the Christian faith; to assist students in their spiritual journey as part of their intellectual formation; to be available to minister to students with questions, personal needs, spiritual exploration; to advise students on their pursuits while at Gordon and beyond; to inculcate the Christian identity and transmit it to the next generation.” Exh. 7—p. 43.

**RESPONSE:** Admitted.

34. President Lindsay testified that Plaintiffs ministerial responsibilities are “[t]o carry and embody the Christian faith; to advance it in its formation in the lives of our students; to bring Christian reflection to bear on her scholarship; to disciple, mentor, give counsel to the students; and to serve their Christian purpose of the institution.” Exh. 7—p 58.

**RESPONSE:** Admitted.

35. Plaintiff initially contacted Gordon about a tenure track faculty position in its social work department on February 25, 1998, through a cover letter to its Provost, in which she states “[a]s a product of a Christian liberal arts college ... I very much want to participate in, and contribute to, Christian liberal arts education.” Exh. 12—DEF001858.

**RESPONSE:** Admitted.

36. Plaintiff states in the letter that her receipt of a Masters in General Theological Studies and mission field experience in the Philippines “ ... could be of particular benefit to Gordon College Students.” Exh. 12—DEF001858.

**RESPONSE:** Admitted.

37. Plaintiff enclosed with her cover letter a document titled “Educational Philosophy,” in which she made the following statements:

- “The pursuit of questions regarding the application of Christianity to social work, for example, requires Christian colleges and universities”;

- “I believe the environment provided by the Christian college is expressly germane to social work education,” because “Christians have an undeniable call to minister to others”; and
- “Our Lord further extends the call to minister to others when he tells us that we must love our neighbors as we love ourselves.” Exh. 13—DEF001905.

**RESPONSE:** Admitted.

38. Plaintiff testified that she would use “different language” if providing her educational philosophy today. Exh. 14—pp. 47-52.

**RESPONSE:** Admitted.

39. Plaintiff testified that she made the statements in the Educational Philosophy and believed them to be true when she made them. Exh. 14—pp. 47-52.

**RESPONSE:** Admitted.

40. On March 9, 1998, Plaintiff submitted an application for employment, in which she signed acknowledgment of her personal agreement with Gordon’s Statement of Faith, stated her Christian beliefs, described her pilgrimage as a Christian, explained how her Christian commitment affected her scholarship, and restated her educational philosophy. Exh. 15—DEF001831-DEF001847.

**RESPONSE:** Admitted.

41. In the application section titled “[d]escribe how your Christian commitment affects your scholarship in your academic discipline,” Plaintiff

stated, in part, that she intended to contribute to the field of social work “with a distinctive Christian perception” and that “Christian commitment affects my scholarship by allowing me to see my work as participation in the reform of human society.” Exh. 15—DEF001844.

**RESPONSE:** Admitted.

42. In the application section titled “[w]hat are the basic responsibilities of a faculty member in an institution of Christian higher education,” Plaintiff stated “to provide a critical, and distinctly Christian, perspective”; “to guide and mentor each student in such a way as to help her discern how Christianity impacts upon her particular discipline”; and “to teach her students how to do ‘Christian scholarship.’” Exh. 15—DEF001845.

**RESPONSE:** Admitted.

43. Plaintiff testified that she “would probably use different language today” and would today try to “moderate” the language she originally used in her application. Exh. 14—pp. 77-84.

**RESPONSE:** Admitted.

44. Plaintiff testified that she made the statements in the application and believed them when she made them. Exh. 13—pp. 83-84.

**RESPONSE:** Admitted.

45. As part of the application process, Plaintiff signed acknowledgment to her agreement with Gordon’s Statement of Faith, which provides, among other things, that “[t]here is one God, the Creator and Preserver of all things, infinite in being and

perfection. He exists eternally in thee Persons: the Father, the Son, and the Holy Spirit, who are of one substance and equal in power and glory.” Exh. 15—DEF001832.

**RESPONSE:** Admitted.

46. Plaintiffs application stated her religious background, training, mission experience, and receipt of an advanced degree in theology. Exh. 15—DEF001840-DEF001841.

**RESPONSE:** Admitted.

47. Gordon made Plaintiff an offer of employment in 1998. Exh. 16—DEF001813.

**RESPONSE:** Admitted.

48. In the letter submitted as Exhibit 16, Gordon states that Plaintiff’s “achievements, academic pedigree, commitment to the Triune God, and expressed desire to benevolently serve in this Christian liberal arts setting have led to [her] appointment to the faculty.” Exh. 16—DEF001813.

**RESPONSE:** Denied. Exh. 16, DEF001813.

49. Gordon’s undergraduate academic catalogue directory lists Plaintiff’s degree from the seminary. Exh. 17—DEF000528.

**RESPONSE:** Admitted.

50. President Lindsay testified that Plaintiffs “ministerial training that she received in seminary, earning a seminary degree from a conservative evangelical institution ... experience as a Southern Baptist missionary ... [and] graduate-level training in biblical counseling” all made Plaintiff well qualified

for the ministerial duties of her position. Exh. 7—pp. 59-60.

**RESPONSE:** Denied. Exh. 7, at 59-60.

51. In the letter submitted as Exhibit 16, Gordon states “[w]elcome to the Gordon College Faculty. May the Lord always bless your work here as you join us in the ‘precious trust’ of developing young Christian hearts, hands, and minds.” Exh. 16—DEF0001813.

**RESPONSE:** Denied. Exh. 16, DEF0001813.

52. As Gordon faculty members progress through the promotion and tenure application processes, they are required to detail how they integrate faith and learning, including by submitting an “integration paper” at the end of their third year of appointment. Exh. 4—DEF000096.

**RESPONSE:** Admitted.

53. In 2002, Plaintiff submitted her third-year integration paper. Exh. 18—DEWEESE-BOYD 002828-DEWEESE-BOYD 002832.

**RESPONSE:** Admitted.

54. Plaintiff states in the cover letter to her integration paper, among other things, that her “work as a Christian scholar is reliant upon what I understand to be the ethical responsibility of the Christian interacting with the world” and speaks to her idea of “faithful scholarship,” which she describes as “scholarship that is faithful to the call of Christ as made evident in scripture, revealed in the Holy Spirit, and witnessed to by the holy catholic church.” Exh. 18—DEWEESE-BOYD 002828, DEWEESE-BOYD 002832.

**RESPONSE:** Denied. DEWEESE-BOYD 002828; Exh. 29 (DeWeese-Boyd Aff.) ¶ 42.

55. In 2009, as part of Plaintiff's application for tenure, she submitted a paper titled "Reflections on Christian Scholarship." Exh. 19—DEF001909-DEF001918.

**RESPONSE:** Admitted.

56. Plaintiff testified at her deposition that "Reflections on Christian Scholarship" was the second paper she submitted for her tenure application. Exh. 14-- pp. 108-111, 121-124.

**RESPONSE:** Admitted.

57. Plaintiff testified that she had previously submitted a draft paper for review by the administration, after which the administration asked her to submit a new paper that was "more explicit" on her integration of the Christian faith into her work. Exh. 14-- pp. 109-110.

**RESPONSE:** Admitted.

58. In her paper "Reflections on Christian Scholarship," Plaintiff made the following statements, among others:

- "I understand the work of integration to be fundamentally about ... pursuing scholarship that is faithful to the mandates of Scripture" and "the vocational call of Christ" (Exh. 19—DEF1909);
- "My approach to Christian scholarship—indeed, my choice of disciplinary field as well as my scholarly interest and pursuits within that field—are shaped by the Scriptural

mandate to pursue shalom” (Exh. 19—DEF001913);

- “In my vocation as [a] Christian Scholar, I strive to make useful contributions to the body of knowledge in my area of expertise—contributions informed by a uniquely Christian perspective, as well as one with practical applications for human society” (Exh. 19—DEF001916);
- “My Christian commitment also affects my scholarship by allowing me to see my work as participation in the ministry of Christian reconciliation” (Exh. 19—DEF001916);
- “[I]n my role as a Christian educator, a desire to follow Christ impacts my work in several ways. First and foremost it informs the choice of disciplinary field in which I teach, as discussed previously. Secondly, it plays out in the methods with which I teach and how I interact with students” (Exh. 19—DEF001916, DEF001917); and
- “In sum, I believe it is our understanding of mandates of Scripture, our understanding of vocation, as well as the dictates of our own consciences, that help shape how we come to view—and take up—our individual roles in furthering in the Kingdom of God as Christian scholars and educators.” (Exh. 19—DEF001918).

**RESPONSE:** Admitted.

59. In 2016, Plaintiff submitted an application for promotion to full professor. Exh. 20—DEF001919-DEF001933.

**RESPONSE:** Admitted.

60. In the “[i]ntroduction” section of the 2016 application, Plaintiff states “my desire to follow Christ informs my chosen field of study, my approach to teaching, the topics I engage as a scholar, and my approach to institutional service.” Exh. 20—DEF001919.

**RESPONSE:** Admitted.

61. Plaintiff further states in the 2016 application, “[t]hroughout my life, I have sought to cultivate a living and active faith in Jesus Christ—one that informs all of my personal and professional endeavors.” Exh. 20—DEF001919.

**RESPONSE:** Admitted.

62. A section of the 2016 application states, “this is what I understand the work of integration to be fundamentally about—pursuing scholarship that is faithful to the mandates of Scripture, the vocational call of Christ, and the dictates of conscience.” Exh. 20—DEF001927.

**RESPONSE:** Denied. Exh. 20, at DEF001927.

63. Plaintiff included feedback from student evaluations in her 2016 application. Exh. 20—DEF001919-DEF001923.

**RESPONSE:** Admitted.

64. When asked at her deposition, “... [y]ou also attended services at the chapel at Gordon with

students, right?”, Plaintiff answered “[y]es.” When next asked, “[t]hings like convocation and other gatherings, correct?” Plaintiff answered “[y]es.” When next asked, “[a]nd that is with Gordon College students, correct?”, Plaintiff answered “[y]es.” Exh. 14-- pp. 224.

**RESPONSE:** Admitted.

65. Plaintiff testified that she has attended a local church at which Gordon students sometimes attend. Exh. 14—p. 223-224.

**RESPONSE:** Admitted.

66. Gordon’s Social Work Program Student Handbook states, among other things, that the Gordon College Social Work Program is informed by a Christian understanding of individuals, communities and societies and a Christian worldview which affirms the value and dignity of every person. Exh. 21—DEF000830-DEF000831.

**RESPONSE:** Admitted.

67. Gordon’s Social Work Program Student Handbook states, among other things, that its program competencies are designed to reflect Gordon College and the social work program’s commitment to Christian and social work values. Exh. 21—DEF000831.

**RESPONSE:** Admitted.

68. Gordons’ Social Work Program Student Handbook states its basic supporting intentions include preparing graduates to integrate Christian and social work values in the practice of social work. Exh. 21—DEF000833.

**RESPONSE:** Admitted.

69. Gordon's Course & Faculty Evaluation Form asks students, among other things, "[d]o you think the professor should do anything more or different to help you connect course material with matters of Christian faith, with content from other courses, or with the concerns of life in today's world?" and "[h]ow effective is this course in awakening and strengthening your understanding of the Christian faith and how it connects to course content?" Exh. 22—p. 3.

**RESPONSE:** Admitted.

70. Plaintiff's students provided the following responses, among others, on the Course & Faculty Evaluation Form:

- "I think the professor did a great job of connecting class materials with Christian faith, with the content from other courses, and concerns of life in today's world" (Exh. 23—DEF001099);
- "I think the professor does a great job of incorporating our faith into our materials, calling us to be relevant and apply our materials to our Christian life" (Exh. 23—DEF001103);
- "[This class] has impacted me and challenged what it means to be a Christian and social worker in society" (Exh. 23—DEF001754);
- "This course was very applicable in this way. For example, for the most part faith is not something we could necessarily talk about at

our agencies, but the class provided an opportunity to do so” (Exh. 23—DEF001147);

- “[Plaintiff] also did an excellent job of provoking our thought and calling our thoughts to a higher level of Christian responsibility” (Exh. 20—DEF001923);

and

- [Plaintiff] invited me to go w/ her to church w/ her family on Easter Sunday, even after we had had a discussion in which her and I had opposing views. It was after class and she took the time to talk w/ me, encourage me, challenge me, and support me on a personal level. I really appreciated that.” Exh. 23—DEF001746.

**RESPONSE:** Admitted.

71. In order to prepare for its future and help to avoid adverse demographic and financial challenges, in May 2019, Gordon College announced its intention to eliminate eight majors and thirty-six full and part-time faculty positions, including the Social Work department. Exh. 24—pp. 1-3.

**RESPONSE:** Denied. Exh. 24, at 1-3.

72. Shortly after Gordon announced the cuts, over 200 past and present students from the Social Work program submitted an unsolicited petition to Gordon with an attached letter, in an effort to persuade Gordon to keep the Social Work program, in which the students made the following statements:

- The “Gordon Social Work program helps intensify our undergraduate experience by

integrating biblical values and cultural literacy in all our course materials” (Exh. 25—DEF003782);

- The “Social Work and Sociology departments provide students the opportunity to learn about real world issues and how to advocate for those in need, which is exactly what Christ calls us to do” (Exh. 25—DEF003782); and

- “Our unique perspectives in core [Social Work] class discussions help enrich theological, moral and ethical discussions.” Exh. 25—DEF003783.

**RESPONSE:** Admitted.

\* \* \* \* \*

GORDON COLLEGE  
BYLAWS

PREAMBLE

Gordon College was chartered by the Commonwealth of Massachusetts for the purpose of carrying on the educational work begun in 1889 by the Reverend Adoniram Judson Gordon and continued without interruption to the present time. In furtherance of that purpose, the following Mission Statement was approved by the Board of Trustees of the College on April 23, 2010: *Gordon College strives to graduate men and women distinguished by intellectual maturity and Christian character, committed to lives of service and prepared for leadership worldwide.*

*To that end, Gordon College, a Christian community of the liberal arts and sciences, is dedicated to:*

- The historic, evangelical, biblical faith;
- Education, not indoctrination;
- Scholarship that is integrally Christian;
- People and programs that reflect the rich mosaic of the Body of Christ;
- Life guided by the teaching of Christ and the empowerment of the Holy Spirit;
- The maturation of students in all dimensions of life: body, mind and spirit;
- The application of biblical principles to transform society and culture.

ARTICLE I

Board Authority and Responsibilities

Section 1. Except as otherwise provided by the Massachusetts General Laws, the Restated Articles of Organization, as amended, or these Bylaws, the

Board of Trustees shall have and exercise the entire charge, control and management of the College and its property. Its ultimate authority is affirmed through its general, academic and financial policy-making functions and its responsibility for the College's financial health and welfare. The Board of Trustees shall exercise ultimate institutional authority as set forth in these Bylaws and in such other policy documents it deems to be appropriate. These Bylaws and other Board policy statements shall take precedence over all other institutional statements, documents and policies.

Section 2. The Board of Trustees shall have the authority to carry out all lawful functions which are permitted by the Massachusetts General Laws, the Restated Articles of Organization, as amended, or these Bylaws. This authority shall include but shall not be limited to these illustrative functions:

1. Determine and periodically review the College's mission and purposes;
2. Appoint the president, who shall be the College's chief executive officer and set appropriate conditions of employment, including compensation;
3. Establish the conditions of employment of other key institutional officers who serve at the pleasure of the president (in consultation with the Board as may be appropriate);

\* \* \* \* \*

135a

The Commonwealth of Massachusetts  
OFFICE OF THE SECRETARY OF STATE  
ONE ASHBURTON PLACE, BOSTON, MA 02108  
FEDERAL IDENTIFICATION  
NO. 04-2104258

Michael Joseph Connolly, *Secretary*

**RESTATED ARTICLES OF ORGANIZATION**

\* \* \* \* \*

2. The purposes for which the corporation is formed are as follows: · Carrying on the educational work begun in 1889 by the Rev. Adoniram Judson Gordon and continued without interruption to the present time; to provide a college education in the liberal arts and sciences to qualified persons; to provide training for the professions; to provide instruction in the Bible and other subjects; to prepare men and women for the work of foreign and home missions, for the duties of the Christian ministry and other special forms of Christian work, and in general, to do any and all things necessary to the proper conduct of the work of the corporation not inconsistent with the laws of the Commonwealth, and, in addition to the degrees it is authorized to grant under Chapter 61 of the Acts of 1927 to grant the degrees of bachelor of arts and bachelor of science.

\* \* \* \* \*