No. 19-267

In the Supreme Court of the United States

OUR LADY OF GUADALUPE SCHOOL, PETITIONER

v.

AGNES MORRISSEY-BERRU, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE RIGHT REVEREND DEREK JONES, THE ALEPH INSTITUTE, THE ASSEMBLIES OF GOD (USA), AND STEWARDS MINISTRIES, AS AMICI CURIAE SUPPORTING PETITIONER

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INTEREST OF AMICI CURIAE[1]

The Ethics and Religious Liberty Commission of the Southern Baptist Convention is an entity of the Southern

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all parties received notice of *amici*'s

Baptist Convention, an incorporated organization whose purpose is to provide a general organization for Baptists in the United States and its territories.

The Church of Jesus Christ of Latter-day Saints is a Christian denomination with over 16 million members worldwide. The Church has religious employment standards that are essential to accomplishing its religious mission.

The Right Reverend Derek Jones is an American Anglican bishop in the College of Bishops of the Anglican Church in North America and Bishop of the Armed Forces and Chaplaincy. The Anglican Church in North America unites some 100,000 Anglicans in nearly 1,000 congregations across the United States and Canada into a single church.

The Aleph Institute is a 35-year-old non-profit Jewish organization dedicated to providing spiritual support and addressing the needs of Jewish persons in institutional environments such as prisons, mental health facilities, and rehabilitation centers throughout the United States.

The Assemblies of God (USA) is a Pentecostal Christian denomination with more than 13,000 churches and over 3 million adherents. It is part of the World Assemblies of God Fellowship, which has more than 69 million adherents worldwide and is the world's largest Pentecostal denomination and fourth largest Christian fellowship.

Stewards Ministries is a non-profit organization that exists to support the Plymouth Brethren, an evangelical Christian movement. In general, the Plymouth Brethren

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intent to file this brief at least ten days before the due date. The parties have consented to the filing of this brief.

do not have formal membership or pastors and meet in independent, local assemblies.

Amici share a fundamental interest in preserving the right of religious organizations to decide, free from state interference, matters of religious government, faith, and doctrine. *Amici* repeatedly encounter issues concerning who may serve in their ministry, including as parties to litigation. The ability of *amici* to decide for themselves who among their members may be entrusted to perform religious functions central to their faith is the cornerstone of their freedom to pursue their own religious missions independent of secular control. When the government dictates which individuals *amici* can hire to perform religious functions, and when those individuals can be fired, the government extinguishes the religious liberty that the Religion Clauses protect from governmental interference.

SUMMARY OF ARGUMENT

This case presents urgent questions about whether religious organizations can continue to rely on the First Amendment's guarantee of governmental non-interference in fundamental matters of faith. Since the Founding, it has been well settled that when religious organizations make decisions about matters of faith, doctrine, or internal governance, the Religion Clauses of the First Amendment bar the government from second-guessing those choices.

Few determinations matter more to religious organizations' fulfillment of their pastoral missions than decisions about which members to entrust with religious functions. When it comes to employment disputes between a religious organization and those employees carrying out central aspects of the faith, the Religion Clauses neces-

sarily trump otherwise-applicable employment laws, because it is "impermissible for the government to contradict a church's determination of who can act as its ministers." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185 (2012).

This so-called "ministerial exception" is no mere technicality of employment law. Rather, it is a vital safeguard against governmental intrusion on "the authority to select and control who will minister to the faithful," which "is the church's alone." *Id.* at 195. This Court in *Hosanna-Tabor* thus rightly refused to "adopt a rigid formula" to define which employees of a given religious group fall within the ministerial exception. *Id.* at 190. Rather, the Court took a holistic approach, looking at various facts relevant to whether someone performs functions commonly understood within the faith as core religious duties. *See id.* at 191-92. Certainly, *Hosanna-Tabor* nowhere suggests that the absence of a formal religious title or training means that the ministerial exception does not apply.

Justices Thomas, Alito, and Kagan, in two concurrences, further emphasized that the ministerial exception must respect religious authorities' determinations regarding which members of the faith are performing central religious functions. *See id.* at 196 (Thomas, J., concurring); *id.* at 199 (Alito, J., concurring). As petitioner notes, the overwhelming majority of courts before and after *Hosanna-Tabor* have focused on whether employees perform core religious functions to determine the applicability of the ministerial exception. Pet. 15-16, 19-21, 25-26. Titles, training, and other formal indicia of status matter—but as possible evidence of the significance of the employee's religious duties, not as independently dispositive facts. *See id.*

And for good reason. Treating the formalities of titles and training as dispositive risks elevating form over substance, with potentially disastrous results for religious liberty in a nation of religious pluralism. Some religions (like the Lutheran faith at issue in *Hosanna-Tabor*) use titles and formal training to identify members entrusted with significant spiritual duties. But other faith groups eschew such formalities, or give a multitude of members seemingly formal titles. Only by focusing on the substance of what particular members do—namely, whether the religious organization to which they belong believes that they perform key religious duties—can courts respect the divergent ways that different religions worship, teach, and self-govern. That understanding of the ministerial exception is necessary, as well, to avoid the type of discrimination against particular groups that the Religion Clauses prohibit.

In a series of cases culminating in the decision below, however, the Ninth Circuit improperly transformed the ministerial exception into a rigid straightjacket that deprives religious organizations of the essential freedom to decide who should perform central duties of a faith. The court below considered it insufficient that respondent—a teacher at a Catholic school—had "significant religious responsibilities" for core aspects of religious instruction. Pet. App. 3a. The court rather found it dispositive that respondent did not "have any religious credential, training, or ministerial background," or "hold herself out to the public as a religious leader or minister," *id.*, as did the Lutheran schoolteacher in *Hosanna-Tabor*.

Absent this Court's immediate intervention, even if employees indisputably perform core religious functions, federal employment rules will supersede the religious or-

ganization's freedom to choose who carries out those functions—unless the religious organization also formally credentials the employee. As petitioner explains, the Ninth Circuit's cabining of the ministerial exception to cases that replicate all the facts of *Hosanna-Tabor* defies the overwhelming consensus of other circuits, which have focused on the significance of an employee's religious functions. Pet. 19-21, 25-26.

Even without that clear circuit split, this Court's review would be imperative. If left undisturbed, the Ninth Circuit's rule would impose an unconstitutional choice on a broad variety of religious groups. Unlike the Lutheran Church, the denomination at issue in *Hosanna-Tabor*, many religious groups do not practice formal ordination, require formal training, or grant formal titles to those performing religious functions. Nonetheless, to avail themselves of the ministerial exception, all faith groups would have to ensure that anyone entrusted with core functions of their faith shared all the titles and training the Lutheran Church bestowed upon teacher Cheryl Perich. Such governmental micromanagement of how religious organizations structure their own affairs is anathema to the Religion Clauses, and would replace religious pluralism with a one-size-fits-all set of organizational rules at an intolerable spiritual price. Not only that, forcing other faith groups to conform to organizational precepts of the Lutheran Church would impermissibly favor one faith over multitudes of others.

Yet the alternative path the Ninth Circuit would leave for religious organizations is even more troubling. Without the ministerial exception, religious organizations would lose control over some of their most sensitive decisions. Here as elsewhere, personnel is policy: "Both the

content and credibility of a religion's message depend vitally on the character and conduct of its teachers." *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring). Churches, synagogues, and mosques alike would have to bow to the government's employment criteria for hiring and firing individuals entrusted with the most sensitive aspects of their faiths. The government could saddle religious organizations with clergy bent on thwarting core tenets of the faith, or teachers who repudiate the very beliefs they are entrusted with inculcating in their students. Without a robust ministerial exception, the government (whether through employment laws or otherwise) would thrust itself into the very "matters of church government as well as those of faith and doctrine" that the Religion Clauses exist to "protect from state interference." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

The Ninth Circuit has placed myriad religious organizations in an untenable situation that demands this Court's immediate intervention. Virtually all religious organizations have a presence within the Ninth Circuit, representing tens of millions of Americans. Those organizations, not the government, should remain in sole charge of choosing their own shepherds for their flocks. This Court should act now and stop the decision below from undoing centuries-old protections against governmental interference with fundamental matters of religious belief.

ARGUMENT

I. The Ministerial Exception Is an Essential Shield Against Unconstitutional Governmental Intrusion into Religious Life

1. It is no accident that courts have overwhelmingly tethered the ministerial exception to religious functions,

not formalities. Long before courts recognized a specific "ministerial exception," it was well settled that religious groups enjoy the freedom to make their own decisions about matters of governance, faith, and doctrine free from governmental interference. The notion that the government can have "no role in filling ecclesiastical offices" predated the Founding. *See Hosanna-Tabor*, 565 U.S. at 181-87. The idea that religious faith, practice, and governance should be free from governmental control "was addressed in the very first clause of Magna Carta," and inspired some of the earliest journeys to the New World. *Id.* at 182-83.

That bedrock principle of non-interference informed the First Amendment's Religion Clauses, which together provide that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. The Founding generation understood these Clauses to circumscribe governmental involvement in filling ecclesiastical offices: "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." *Hosanna-Tabor*, 565 U.S. at 184.

A long line of this Court's decisions reinforced the point. The Court in *Watson v. Jones* observed that determinations of decision-making bodies of a church group cannot be overruled through secular government or lawmaking as to "questions of discipline, or of faith, or ecclesiastical rule, custom, or law." 80 U.S. 679, 727 (1872). Nearly a century later, the Court similarly held that the government of New York had no power to compel Russian Orthodox churches in the state to recognize the authority of the governing body of the North American church, reasoning that "the Church's choice of its hierarchy" was

"strictly a matter of ecclesiastical government." *Kedroff*, 344 U.S. at 96-97, 115, 119. The Court likewise rejected the notion that civil courts could second-guess whether an ecclesiastical tribunal should remove a bishop, regardless of whether civil courts believed the church had complied with its own laws and regulations. *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 724-25 (1976).

In short, the Court has long understood the Religion Clauses to protect not only the "[f]reedom to select the clergy," *Kedroff*, 344 U.S. at 116, but also the general right of religious groups to organize, regulate, and govern themselves in accordance with their own principles. Nor is such a rule unfair: employees of religious groups, after all, give "implied consent to [church] government, and are bound to submit to it" given the special ecclesiastical nature of that relationship. *Watson*, 80 U.S. at 729.

2. The Court's reasoning in *Hosanna-Tabor* underscores that the ministerial exception must be sufficiently broad to preclude governmental interference into which individuals will carry out functions a religious group deems critical to its mission. The Court explained that "[r]equiring 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" and instead "interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs." 565 U.S. at 188. And a "minister," the Court explained, is not just someone holding that specific title, or confined to "the head of a religious congregation." *Id.* at 190. Rather, the ministerial exception recognizes that the Religion Clauses protect religious groups' entitlement to control "who will preach

their beliefs, teach their faith, and carry out their mission." *Id.* at 196. Determining which individuals perform those core religious functions is thus central to the inquiry.

True, the Court looked to a host of facts relevant to understanding why a "called" Lutheran teacher fell within the ministerial exception. For instance, the Court cited "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. But the Court looked at these considerations as indicia of the respondent's "role in conveying the Church's message and carrying out its mission," *id.*—in other words, her degree of involvement in performing religious functions. And the Court cautioned that these factors were no "rigid formula for deciding when an employee qualifies as a minister." *Id.* at 190; *see Fratello v. Archdiocese of N.Y.*, 863 F.3d 190, 204-05 (2d Cir. 2017) ("*Hosanna-Tabor* instructs only as to what we *might* take into account . . . it neither limits the inquiry to those considerations nor requires their application in every case."); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 177 (5th Cir. 2012) (similar).

That focus on an employee's "role in conveying the Church's message and carrying out its mission," *Hosanna-Tabor*, 565 U.S. at 192, also exemplifies how lower courts have interpreted the ministerial exception. Time and again, courts have held that the government cannot interfere with a religious organization's employment decisions even where the "ministers" in question are not labeled "ministers," are not formally ordained, and received no formal religious certifications or instruction. What matters is whether the religious organization believes in

good faith that the functions an employee performs are important to advancing its pastoral mission.

The Seventh Circuit, for instance, recently held that a Catholic church organist fell within the ministerial exception despite lacking these similarities to the facts of *Hosanna-Tabor*. The court cited a United States Conference of Catholic Bishops document "explaining how music advances not only celebration of the mass but also other devotional matters." *Sterlinski v. Catholic Bishop of Chi.*, 934 F.3d 568, 569 (7th Cir. 2019). As the court explained: "If the Roman Catholic Church believes that organ music is vital to its religious services, and that to advance its faith it needs the ability to select organists, who are we judges to disagree?" *Id.* at 570. The Fifth Circuit employed similar reasoning to conclude that a Catholic music director fell within the ministerial exception. *Cannata*, 700 F.3d at 178.

Likewise, the Massachusetts Supreme Judicial Court held that the ministerial exception barred a Jewish schoolteacher's employment complaint. *Temple Emanuel of Newton v. Mass. Comm'n Against Discrimination*, 975 N.E.2d 433, 443 (Mass. 2012). Although "she was not a rabbi, was not called a rabbi, and did not hold herself out as a rabbi" and apparently had little religious training, she "taught religious subjects at a school . . . whose mission was to teach Jewish children about Jewish learning, language, history, traditions, and prayer." *Id.* These courts thus rightly approach the ministerial exception as centering upon the importance of an employee's religious functions—not as a formalistic exercise that rejects the exception whenever the facts diverge from *Hosanna-Tabor*.

3. Looking to the substance of how religious organizations characterize employees' religious duties is also essential to preserve a uniform rule that treats the nation's

diverse faith groups equally: only employees whom the religious organization in good faith believes are performing core religious functions fall within its ambit. Over 100 religions or categories of religions count Americans as adherents. *See* Pew Research Center, *America's Changing Religious Landscape* 21 (May 12, 2015), https://www.pewforum.org/wp-content/uploads/sites/7/2015/05/RLS-08-26-full-report.pdf. And in every religion, certain members perform core religious functions, like leading a congregation in worship, proselytizing the faith, instructing adherents, or otherwise carrying out a religious mission.

But faith traditions vary widely in their conceptions of what core religious functions of their faith entail, and who performs them. *See Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring). For instance, Protestant faiths often designate "ministers," but that term "is rarely if ever used" to reference clergy "by Catholics, Jews, Muslims, Hindus, or Buddhists." *Id.* at 198 (Alito, J., concurring); *see also* 10 Encyclopedia of Religion 7451-52 (2d ed. 2005) (Protestantism is historically characterized by "ambiguity about the lay-clerical distinction," and "in almost all cases they retained a specially sanctioned clergy, ascribed great authority also to the laity, and left the status of both ambiguous"). Depending on the particular faith, a religious organization's failure to use the term "minister" to describe an employee thus may shed no light on whether that person in fact serves a crucial role in worship or religious ceremonies.

Similarly, "the concept of ordination as understood by most Christian churches and by Judaism has no clear counterpart in some Christian denominations and some other religions." *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring). In the Catholic faith, for instance, nuns are not ordained, but few could doubt that their functions

are fundamental to advancing the faith. *See, e.g.*, *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996). Other religions also reserve separate, non-ordained roles for women, who, under the tenets of their faith, cannot serve as ordained ministers. *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1165 (4th Cir. 1985) (recognizing that "in the Seventh-day Adventist Church women may not stand for ordination").

Likewise, faith traditions vary widely as to whether and to what degree those performing important religious functions must receive formal training, and what that training entails. *See Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring). A Catholic school principal, for example, may not need to "meet any formal religious-education requirements," but may be required to be a "practicing Catholic in union with Rome, with a commitment to the teachings of the Church." *Fratello*, 863 F.3d at 208. The person in such a role nonetheless functions as a critical example of the faith and plays a central role in inculcating its precepts. *See id.* at 209. The same goes for Catholic church organists, *see Sterlinski*, 934 F.3d at 569, and Jewish schoolteachers, *Temple Emanuel*, 975 N.E.2d at 443, neither of whom necessarily undergo formal doctrinal training.

Positions in some faith traditions also have no corresponding religious significance for others. A "mashgiach" in the Orthodox Jewish tradition, for instance, supervises food preparation. *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 301-02 (4th Cir. 2004). But that person does so pursuant to authorization from Orthodox rabbis, ensures that food preparation is kosher, and may make judgment calls about compliance with Jewish law. *Id.* Those functions, in turn, ensure compliance with kosher dietary laws, which the Orthodox Jewish faith

considers a central aspect of the religion. *Id.* Likewise, "communications director" is not a role that exists in every faith group. But a communications director for the Catholic diocese who "is often the primary communications link to the general populace" is "critical in message dissemination, and a church's message, of course, is of singular importance." *Alicea-Hernandez v. Catholic Bishop of Chi.*, 320 F.3d 698, 704 (7th Cir. 2003).

In short, the ministerial exception looks to how a given faith tradition defines religious functions, not to the labels attached to different employees, precisely because "[d]ifferent religions will have different views on exactly what qualifies as an important religious position." *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). The stakes of maintaining that understanding of the ministerial exception are difficult to exaggerate. A wide array of religious organizations, including *amici*, depend on the ministerial exception to preserve their autonomy to structure their own affairs and to determine the best messengers for their faiths. The functional approach to the ministerial exception avoids privileging faith groups that rely on more formal structures or designations at the expense of the many groups that eschew such outward signaling—a form of religious discrimination that the First Amendment emphatically prohibits. *See, e.g.*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993); *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953). By deferring to different religious groups' good-faith explanations of which individuals perform functions necessary to a religious mission, this approach also avoids protracted litigation and judicial second-guessing of whether religious groups have correctly characterized tenets of their faith. *See Sterlinski*, 934 F.3d at 570.

II. The Ninth Circuit's Narrowing of the Ministerial Exception Threatens Myriad Religious Communities

The decision below profoundly threatens the essence of religious autonomy. "The Constitution leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a teacher or messenger of its faith," because those functions are so critical to the survival of the faith. *Hosanna-Tabor*, 565 U.S. at 202 (Alito, J. concurring). The decision below, however, usurps that authority from religious groups and vests it in the government.

The Ninth Circuit's rule repudiates the notion that courts could ever accept a religious group's sincere statement that particular employees are indeed performing religious functions. And the Ninth Circuit's rule would leave it to the government to dictate employment criteria for members of a religious group entrusted with elemental functions of the faith if the group fails to affix formal labels to those employees, put them through formal training, and ensure they outwardly represent themselves as "minister" equivalents. *Supra* pp. 10-14; Pet. 31-32.

In other words, religious traditions whose employees fail to conform perfectly to all the facts of *Hosanna-Tabor*—despite the conceded importance of an employee's religious functions—can find no refuge in the ministerial exception. Pet. App. 2a-3a. If left undisturbed, that one-size-fits-all approach to the ministerial exception would compromise many religious organizations' "freedom to speak in [their] own voice, both to [their] own members and to the outside world." *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J. concurring). This Court's immediate intervention is essential to prevent grave and widespread encroachments on fundamental constitutional guarantees.

Those problems are not mere abstractions. The Ninth Circuit's inappropriately rigid approach urgently threatens a host of religious organizations with intolerable choices. As *amici* can attest, the ministerial exception is a critical safeguard for religious organizations of all stripes to avoid being forced to litigate internal ecclesiastical disputes before civil courts. A multitude of groups, representing millions of adherents, have built faith communities within the Ninth Circuit. But henceforth, to invoke the ministerial exception, any groups that do not already conform to the practices of the Lutheran Church would have to adopt formal ordination, formal titles, formal religious training, and other outward forms of recognition. Forcing groups to adopt those outward signals of religious significance for the good of secular observers would amount to the very "judicial rewriting of church law" that the First Amendment abhors. *Serbian E. Orthodox Diocese*, 426 U.S. at 719.

There is no question that many groups would feel intense pressure to conform, but for the unconscionable spiritual price. As Justice Thomas highlighted in his *Hosanna-Tabor* concurrence, a "bright-line test" like the Ninth Circuit's as to who qualifies as a "minister" might "cause a religious group to conform its beliefs and practices regarding 'ministers' to the prevailing secular understanding." 565 U.S. at 197 (Thomas, J., concurring). And "it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987).

Consider the following: In declining to apply the ministerial exception in *Biel v. St. James School*, the Ninth

Circuit found it persuasive that there was "nothing religious reflected" in a Catholic school teacher's title—"Grade 5 Teacher." 911 F.3d 603, 608-09 (9th Cir. 2018), *petition for cert. filed* (Sept. 17, 2019) (No. 92-212); *see also* Pet. App. 2a ("Unlike the employee in *Hosanna-Tabor*, Morrissey-Berru's formal title of 'Teacher' was secular."). To avoid costly litigation and governmental interference, a religious organization might be tempted to add wording to the title of a specific position in order to better signal to courts the important religious functions that a position serves. But in so doing, a church's "process of self-definition would be shaped in part by the prospects of litigation." *Amos*, 483 U.S. at 343-44 (Brennan, J., concurring). Such direct governmental influence on the shaping of internal church affairs is untenable.

Refusing to yield to this judicial micromanagement of church functions, however, would force religious groups to confront a litany of other unconscionable consequences. Disabled from invoking the ministerial exception, religious groups would be forced into civil courts to litigate employment disputes with employees performing some of the most critical functions of their faiths. Religious groups could be plunged into expensive and invasive litigation and discovery, subject to the ever-present risk that courts would scrutinize untold numbers of ecclesiastical decisions leading up to the lawsuit. The "very process of inquiry" could "impinge on rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Religious groups would face enormous pressure to screen applicants not only for requisite spiritual qualities, but also for potential litigiousness—potentially altering the group's preferred choice of candidates to perform its essential functions. By allowing the absence of a formal title and training to defeat the excep-

tion, the Ninth Circuit's approach would exclude even employees with job functions whose religious significance is obvious.

Consider, for instance, certain employees of the Church of Jesus Christ of Latter-day Saints. The Managing Director of the Church's Priesthood and Family Department directly oversees, under the direction of Church apostles, the creation of religious curriculum, the translation of Church scripture, the coordination of youth ministries, special needs ministries and prison ministries, and the formulation of instructions and guidelines for local ecclesiastical leaders. In the Church's view (and under any objective standard), the person in this position carries out vitally "important religious functions," even though the person lacks a "formal religious title" or even a title that reflects "ministerial substance and training." *See* Pet. App. 2a. Likewise, the Managing Director for the Church's Missionary Department, who works directly with Church apostles in assigning, organizing, and overseeing tens of thousands of Church missionaries worldwide, performs critical religious functions. So does the Managing Director of the Church's Temple Department, who, working with Church apostles, has stewardship over Church temples—the faith's most sacred places of worship—and the sacred religious rites and ceremonies that occur there. But under the Ninth Circuit's approach, these positions would fall outside the ministerial exception unless the Church were to change its internal governance by designating novel titles and instituting religious training in anticipation of judicial review.

By discounting an employee's important religious functions, the Ninth Circuit threatens religious groups' "authority to select and control who will minister to the faithful"—a matter that is "'strictly ecclesiastical" and is

"the church's alone." *Hosanna-Tabor*, 565 U.S. at 195 (quoting *Kedroff*, 344 U.S. at 119). This Court should not abandon religious groups to the choice of compromising their internal structures to qualify for the ministerial exception, or accepting the government's veto power over "who is qualified to serve as a voice for their faith." *Id.* at 201 (Alito, J., concurring).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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