No. 10-553

In the Supreme Court of the United States

HOSANNA-TABOR EVANGELICAL LUTHERAN CHURCH AND SCHOOL, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR INTERNATIONAL MISSION BOARD OF THE SOUTHERN BAPTIST CONVENTION, ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, COUNCIL OF HINDU TEMPLES OF NORTH AMERICA, MANDAEAN ASSOCIATION OF MASSACHUSETTS, AND INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the ministerial exception applies to a teacher at a religious elementary school who teaches the full secular curriculum, but also teaches daily religion classes, is a commissioned minister, and regularly leads students in prayer and worship.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[*]

Amici, a diverse group of religious denominations and institutions described more fully in Appendix A, believe that religious groups must be able to choose their own leaders and exemplars without government interference, and that a robust "ministerial exception" is critical to religious liberty. *Amici* agree with Petitioner's constitutional analysis, and file this brief to emphasize that the ministerial exception is grounded in the original understanding of the First Amendment's Assembly and Free Exercise Clauses.

Consistent with the history discussed below, the lower courts have long recognized the risks inherent in regulating the relationship between a church—by which we mean religious organizations and houses of worship of all kinds—and its leaders and exemplars. A church's freedom to choose such individuals is critical to controlling its voice and maintaining its integrity. A church's standard bearers—including teachers who serve pastoral and devotional roles in religious schools—are the chief means by which it passes the faith to the next generation.

The ministerial exception thus safeguards religious freedom by requiring secular courts to abstain from certain employment disputes between religious institutions and key personnel. Those disputes are

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[*] The parties have consented to the filing of this brief, and their letters of consent are on file with the Clerk. No counsel for any party has authored this brief in whole or in part, and no person or entity, other than the *amici* and their counsel, has contributed monetarily to the preparation or submission of this brief. See Rule 37.6.

sensitive, complex, and often dependent on matters of religious doctrine. Courts must tread carefully.

The approach of the Sixth Circuit, however, requires courts to resolve church employment disputes unless a court concludes that an employee's "primary duties" are religious. Pet. App. 16a. Under this approach, secular courts decide which of an employee's duties are "religious" and whether those duties are "primary." Further, this approach requires secular courts to resolve employment disputes that turn on matters of religious doctrine—even where, as here, resolution requires the court to determine whether the religious reason offered is pretextual or truly reflective of Church teaching.

Although *amici* represent a wide array of religious faiths, they are united in their opposition to this unpredictable and narrow "primary duties" test. The line between religious and secular duties "is hardly a bright one." *Corp. of Presiding Bishop* v. *Amos*, 483 U.S. 327, 336 (1987). And in light of the subtlety and complexity of the task, there is every reason to "be concerned that a judge would not understand [an institution's] religious tenets and sense of mission" (*ibid.*), particularly in cases involving religious minorities or less familiar traditions. Courts will frequently misunderstand the religious institutions they are called upon to judge (see, *e.g., Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 717-720 (1976)), or will make an earnest attempt at understanding, but find themselves in deep theological waters: What looks secular may not be; what looks unimportant may be indispensible.

Furthermore, religious institutions should not be forced to make spiritually significant employment de-

cisions in an atmosphere in which they can but guess which duties a court will find important enough to trigger protection. "Fear of potential liability" has an unfortunate chilling effect on "the way an organization carrie[s] out * * * its religious mission." *Amos*, 483 U.S. at 336.

The specter raised here—the government ordering a religious group to give a critical role to someone in whom the group has lost faith—implicates a range of constitutional principles that together demand a ministerial exception that is spacious rather than crabbed. Regulation that constrains religious groups' ability to choose their teachers and ministers not only raises "serious First Amendment questions," *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 504 (1979), it is contrary to the associational rights protected by both the Assembly Clause and the Free Exercise Clause. As explained below, that conclusion follows from practices during the Founding era, see, *e.g.*, *Nevada Comm'n on Ethics* v. *Carrigan*, No. 10-568, 564 U.S. __, slip op. 4-5 (June 13, 2011); *Marsh* v. *Chambers,* 463 U.S. 783, 787-791 (1983), and from this Court's prior decisions.

STATEMENT

This case is an employment dispute between Petitioner Hosanna-Tabor Evangelical Lutheran Church and School and a former teacher, Respondent Cheryl Perich. The Church is an ecclesiastical corporation and a member congregation of The Lutheran Church –Missouri Synod. Its school is dedicated to providing a "Christ-centered education" based on biblical principles. Pet. App. 3a-5a.

As a "called teacher," Perich was required to complete training in Lutheran theology and to receive a

declaration from a faculty committee that she was prepared for the ministry. *Id.* at 3a, 33a, 51a. Perich was appointed to her position by a vote of the Church's congregation, and she was issued a call by the Church to serve as a "commissioned minister." *Id.* at 3a-4a, 33a-34a. She could not be fired without cause, and she was subject to the same dispute resolution procedures as the Church's pastor. *Id.* at 3a, 51a.

Perich taught fourth grade. Her obligations included "integrat[ing] faith into all subjects," serving as a "Christian role model[]," teaching religion classes four days a week, leading her students in prayer and devotional exercises several times daily, and attending chapel services with her students every week. *Id.* at 4a-5a, 35a.

Just before the 2004-2005 school year, Perich became ill. With the school's support, she took medical leave, but subsequently she insisted on returning to work in the middle of the school year. *Id.* at 5a-8a, 35a-37a. Concerned about Perich's ability to safely supervise students—and about disruption to the students who had already changed teachers twice that year—the school asked Perich to continue her leave while they developed a plan for her return. *Id.* at 6a-7a, 35a-37a. Perich refused and reported to work even though the school had no job for her. When the school's principal suggested that Perich's conduct had jeopardized her continued employment, she threatened to sue. *Id.* at 8a, 38a.

Church teaching, however, provides that such disputes should be resolved within the Church rather than in court. The Church has therefore adopted bylaws providing a detailed procedure for internal dis-

pute resolution and appeals. See *id.* at 77a-104a. As a called teacher serving the Church as a commissioned minister, Perich had the right and the obligation to use these procedures. *Id.* at 51a.

Perich chose to reject that obligation. Accordingly, citing her "insubordination and disruptive behavior" and her "threat[s] to take legal action," the school board recommended rescinding her call. *Id.* at 38a, 9a. At the next congregational meeting, the Church's members voted to do so. *Ibid.*

Following her termination, Perich filed a charge with the Equal Employment Opportunity Commission (EEOC). The EEOC in turn sued the Church, alleging a single count of retaliation (not discrimination) under the Americans With Disabilities Act. Perich intervened, seeking a court order requiring the Church to reinstate her as a commissioned minister.

Noting that "the school values [its called teachers] as ministerial," the district court found that Perich "must be considered a ministerial employee." *Id.* at 50a-51a. As the court recognized, Perich's threats of litigation violated the Church's religious teachings regarding the need to resolve disputes internally, and applying the ministerial exception enabled the court to avoid scrutiny and "exploration of religious doctrine." See *id.* at 50a-52a.

The Sixth Circuit reversed. Although it acknowledged that other circuits disagreed with its approach, the court chose to "look at the function, or 'primary duties' of the employee," and to apply the ministerial exception if the employee's primary duties are religious in nature. *Id.* at 16a. Even though Perich was a commissioned minister, the court "look[ed] at the function of the plaintiff's employment position," ra-

ther than her status as a minister, to determine whether her position was "important to the spiritual and pastoral mission of the church." *Id.* at 17a (internal quotation marks and citation omitted). In the court's view, Perich's role—as a minister teaching the Church's children—was not sufficiently important.

The court of appeals further reasoned that proceeding with this case "would not require the court to analyze any church doctrine," because church policies "clearly contemplate that teachers are protected by employment discrimination and contract laws." *Id.* at 24a. The court did not explain how those laws can be reconciled with the Church's explicitly faith-based requirements not only for internal dispute resolution, but also for training, hiring, and retaining called teachers and commissioned ministers such as Perich.

SUMMARY OF ARGUMENT

The ministerial exception is grounded in the freedom of association protected by the First Amendment's Assembly and Free Exercise Clauses. As originally understood, these provisions protected the right to define and organize a religious group or association—including its right to choose its own leaders and teachers—without government interference. And subsequent decisions by this Court, in both religious and non-religious contexts, have confirmed this principle.

The ministerial exception should be understood and applied consistent with these provisions and the right to free association (and non-association) they provide. Religious groups have the right to choose, free from governmental interference, who will lead them and who will pass their faith onto the next generation. Congress has no authority to interfere. This

is the essence of the ministerial exception. And it precludes judicial review of a religious group's decision that a particular individual may no longer teach its children.

ARGUMENT

I. The Ministerial Exception Is Grounded In Associational Rights Protected By The Assembly Clause And This Court's Precedents.

As originally understood, the constitutional right of free assembly included the right to form groups—for political, religious, or even social purposes. By itself, this right strongly supports the ministerial exception, which is a special case that arises in part from rights enjoyed by any protected "assembly": deciding who will meet together, how they will define and organize themselves, and who their leaders will be.

Indeed, although the Court has not canvassed the history in detail, these rights have been recognized in a number of this Court's freedom of association precedents, *e.g.*, *Boy Scouts of America* v. *Dale*, 530 U.S. 640 (2000); *Hurley* v. *Irish-Am. Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995); *Eu* v. *San Francisco Cnty. Dem. Cent. Comm.*, 489 U.S. 214 (1989), which affirm that the freedom "to speak, to worship, and to petition the government for redress of grievances" requires the "correlative freedom to engage in *group* effort toward those ends." *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984) (emphasis added). The Framers affirmatively guaranteed that freedom in the Assembly Clause. Thus, quite apart from the special character of associational rights in the context of religious groups (which we discuss in Part II), the historical record shows that such rights

are not purely derivative of speech; they are also supported by the history of free assembly.

A. History shows that the Framers adopted the Assembly Clause to protect the right to form groups, including for religious purposes.

The Assembly Clause was intended to protect the right of individuals to organize into groups—not just to physically assemble themselves, but also to *form* assemblies. This protection was understood to extend beyond groups seeking to engage in political speech, or for that matter any speech. Indeed, as the history shows, one central evil addressed by the Clause was government interference with *religious* assemblies.

1. The right to assemble is not dependent on the right to petition.

We begin with the text: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. This grammatical structure—from a serial disjunctive list to a conjunctive final clause—might suggest that the right to assemble is nothing more than a specific example of the right to petition. As discussed below, however, that reading is untenable in light of the history of the Amendment's drafting.

Even at a strictly textual level, the use of the final serial comma, after "assemble," serves to separate the Assembly Clause from the Petition Clause. If the Framers intended a single right—a right to assemble *in order to petition*, and no right to petition except by assembling—they would not have used a comma. See

John D. Inazu, *The Forgotten Freedom of Assembly*, 84 Tul. L. Rev. 565, 573-574 (2010) (Inazu); *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241-242 (1989) (when a phrase is set off by commas, it may suggest that the drafters intended for it to "stand[] independent of the language that follows").

This understanding of assembly as a stand-alone right is confirmed by how the Clause was revised by Congress before its adoption. The penultimate draft of the First Amendment included the "right of the people peaceably to assemble and consult *for their common good*, and to petition the government for a redress of grievances." S. Journal, 1st Cong., 1st Sess. 70-71 (1789) (emphasis added). Two States had proposed draft amendments providing for "a right peaceably to assemble together to consult for *the* common good."[1] The proposal James Madison brought to the House, however, reflected the broader formulation, *i.e.*, "their" common good. 1 Annals of Cong. 451 (Joseph Gales ed., 1790). And the House debates reflected the Framers' awareness that a right of assembly that would protect only mainstream groups who supported the social order—"*the* common good" rather than "*their* common good"—would be of slight value. Inazu 572.

Ultimately the entire phrase, "for their common good," was taken out of the Clause. This happened without explanation when the Senate revised the draft Amendment to include the Religion Clauses. S. Journal, 1st Cong., 1st Sess. 77 (1789), Inazu 573.

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[1] 3 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 658-659 (Jonathan Elliot ed., 1836) (Elliot) (Convention of Virginia); see also 4 Elliot 244 (Convention of North Carolina).

Given the earlier conflict over "the common good" versus "their common good," this omission is best understood as intended to broaden the Clause, not as reducing the right of assembly to a mere handmaiden of the right to petition.

In sum, the historical record confirms that the right to assemble—including, as discussed below, the right to assemble for religious purposes—was viewed as a stand-alone right.

2. The Assembly Clause is not redundant of the Speech Clause.

The independent significance of the Assembly Clause is further confirmed by the House debates, which show that the Framers considered and rejected the notion that the Assembly Clause added nothing to the freedom of speech.

One House member, Theodore Sedgwick, opposed the Clause because, in his view, assembly was "a self-evident, unalienable right which the people possess," and a necessary component of free speech; therefore, it would be "derogatory to the dignity of the House to descend to such minutiae." 1 Annals of Cong. 759 (1790). Sedgwick thus moved to strike the Clause's reference to assembly, insisting that there was no need to stoop to "trifles" such as assembly—or, he added, whether "a man should have a right to wear his hat if he pleased." *Id.* at 760.

But this view did not carry the day. Elbridge Gerry "conceived [assembly] to be an essential right," and John Page distinguished "the power of assembling" from "every other privilege contained in the clause." *Ibid.* The House defeated the motion to strike "by considerable majority" (*id.* at 761), thus affirming

that assembly meant more than simply speech, and was far from a "trifle."

3. The Assembly Clause protects religious assembly.

The House debates also reveal the Framers' specific understanding that the right of assembly would protect not only political expression, but religious assemblies. Addressing Sedgwick's facetious reference to hat-wearing, Page noted that "such rights have been opposed, and a man has been obliged to pull off his hat when he appeared before the face of authority." *Id.* at 760. Page thus "brought forward, without needing to name it, one of the great examples of judicial tyranny founded on pretended law"—the trial of William Penn. Irving Brant, *The Bill of Rights: Its Origin and Meaning* 62 (1965) (Brant).

Penn's religious group, the Society of Friends, also known as the Quakers, had come under heavy persecution in seventeenth-century England for failing to adhere to the tenets of the Anglican Church. Quakers "found their meeting-houses occupied by guards of watchmen, but met outside in the court or the open street." William C. Braithwaite, *The Second Period of Quakerism* 68 (1919).

It was there on the street that Penn, preaching to a group of fellow Quakers, was arrested. Penn and another Quaker, William Mead, were charged with unlawful assembly. Brant 56. Quakers believed that taking off their hats in public both degraded the Quaker and "unduly exalt[ed]" the recipient; they took off their hats for God, not men. See Joseph Barker, *Life of William Penn: the Celebrated Quaker and Founder of Pennsylvania* 27-28 (1847). As Penn and Mead entered the courtroom, however, an officer

removed their hats. The court ordered the officer to put the hats back on—and then ordered Penn to take his off again. Penn refused and was fined. *Id*. at 44.

After an outburst in which he demanded to know what law he had violated, Penn spent the rest of the trial in the bale-dock, hidden from view. Brant 58. At the trial's conclusion, the jury was instructed that if it found that Penn had preached in the street, he must be convicted. *Ibid.* But the jury did not comply: Although it found Penn "[g]uilty of speaking on Gracechurch street," it refused to find an unlawful assembly. *Id.* at 59. The jurors were kept overnight, but returned the same verdict the next morning. *Id.* at 60. The jury returned identical verdicts twice more, and then, after another overnight deliberation, simply found Penn not guilty—at which point the jury was imprisoned for failing to obey the judge's order. *Ibid*. Penn, meanwhile, remained in custody for his hat-wearing.

A pamphlet later penned by Penn and Mead—*The People's Ancient and Just Liberties, asserted, in the Trial of William Penn and William Mead at the Old Bailey, 22 Charles II 1670, written by themselves*—was widely read and influential in the colonies. And because the story was so well-known to lawyers and legislators, Page's "mere reference to it" during the House debate "was equivalent to half an hour of oratory." Brant 55-56, 61.

By invoking this episode to illustrate the necessity of the Assembly Clause, Page confirmed not only that the right to assemble could not be taken for granted, but also that "the right of assembly under discussion in the House encompassed more than meeting to petition for redress of grievances: Penn's ordeal had noth-

ing to do with petition; it was an act of religious worship." Inazu 576. This colloquy thus confirms that the Assembly Clause protects both political *and* religious assemblies.

4. The Assembly Clause protects the general right to form groups.

Finally, the existence of, and reaction to, dissident assemblies in the early days of the Republic confirm that the Assembly Clause protects a general right to form and organize groups. That right could easily have wilted in the crucible of a fragile new Nation. Instead, it survived and flourished. As Alexis de Tocqueville would later observe: "In no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America." Alexis de Tocqueville, 1 *Democracy in America* 198 (Bradley ed., 1954).

The right to form groups was put to the test during the Washington administration, when citizens began organizing groups that opposed the Government's Federalist policies. Known as Democratic-Republican societies, these groups depended on—and often proclaimed—their right to assemble. Notably, although the societies were built around political ideas, they did not limit their gatherings to political discussions. They also held fairs, festivals, and parades. See Simon P. Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* 2 (1997).

Opposition to the societies, which excluded outsiders, was fierce. That opposition, however, was based on the Federalist view that the will of the people should be exercised through governmental institutions, and that "a group opposing the decisions of

those institutions necessarily spoke only for a self-interested minority or 'faction.'" Robert M. Chesney, *Democratic-Republican Societies, Subversion, and the Limits of Legitimate Political Dissent in the Early Republic*, 82 N.C. L. Rev. 1525, 1541-1549 (2004) (Chesney). That is, the Federalists opposed sedition, not assembly.

Although the societies and their defenders argued that collective opposition was good policy, they also fiercely maintained their legal right to exist. See Chesney 1549-1550. "The right to association in Democratic Societies has been questioned by some," wrote one society, "but if we have not this privilege, by what constitutional text will other associations be justified? If we as a number have not the right to speak our sentiments, by what political logic will the right of an individual be defended?"[2] Another society declared it "the undeniable right of all freemen and citizens to form societies, to consult among themselves, and to recommend such means as shall appear best adapted to support public peace, and to promote general benefit."[3] A third offered this challenge: "I dare the Legislature of the United States to pass a law prohibiting the Democratic Society in the City of New-York: Yes, Sir, I repeat it—they dare not even

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[2] German Republican Society of Philadelphia, *Address to the Free and Independent Citizens of the United States* (Dec. 29, 1794), in *The Democratic-Republican Societies, 1790-1800: A Documentary Sourcebook of Constitutions, Declarations, Addresses, Resolutions and Toasts* 61-62 (Philip S. Foner ed., 1976) (Foner).

[3] Franklin or Republican Society of Pendleton County, South Carolina, *Resolutions Adopted on a Variety of Subjects* (June 30, 1794), in Foner 396.

make the attempt. * * * I will tell you why they dare not do it—Because, Sir, they have too much virtue—too much regard for our happy, our glorious, constitution, to attempt passing so base, so tyrannical, so unconstitutional, an act."[4]

The societies drew President Washington's ire, but others initially persuaded him not to move against them. Most notably, Thomas Jefferson (then Secretary of State) argued to Washington that attempting to proscribe a society would backfire, because "*multitudes would join it merely to assert the right of voluntary associations*." Thomas Jefferson, *The Anas* (notes from cabinet meeting held Aug. 2, 1793), in 1 *Writings of Thomas Jefferson* 380 (Albert Ellery Bergh ed., 1905) (emphasis added).

The Whiskey Rebellion, however, provided a political climate in which the societies were susceptible to attack. During the summer of 1794, citizens in western Pennsylvania engaged in organized, and violent, resistance to an excise tax. Washington directed a federal show of force that ended the insurrection. In his 1794 Address to Congress, however, the President "made one serious mistake": He not only condemned the Rebellion, he laid it at the societies' feet. David P. Currie, *The Constitution in Congress: The Federalist Period 1789–1801* 190 (1997). Specifically, Washington accused "certain self created societies" of encouraging the insurrection. See 4 Annals of Cong. 788 (1794). James Madison called this attack "perhaps the greatest error of [Washington's] political life." James Madison, Letter to James Monroe (Dec.

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[4] A Member of the Democratic Society of the City of New York, Letter to New-York Journal (June 18, 1794), in Foner 165-166.

4, 1794), in 15 *Papers of James Madison* 405-406 (Charles F. Hobson et al., eds., 1985).

Following this address, the House extensively debated whether the societies should be censured. See 4 Annals of Cong. 899-912, 935-948.[5] The issues debated included whether the societies' rhetoric had "stimulated the insurgency," whether censure would "have any practical significance," and whether "Congress even ha[d] authority to comment on the societies." See Chesney 1562. But critically for present purposes, the House also discussed whether "the societies ha[d] a constitutional right to exist." *Ibid.* Both sides of the debate were able to fully air their views. And as this Court has recognized, "evidence of opposition to a measure * * * infuses [a historical argument] with power by demonstrating that the subject was considered carefully and the action not taken thoughtlessly." *Marsh*, 463 U.S. at 791.

Initially, no less a figure than the First Amendment's principal draftsman, James Madison—joined by Thomas Scott and over Sedgwick's objection—drafted a reply to Washington's address that, conspicuously, did not address the societies. See Irving Brant, *James Madison: Father of the Constitution 1787-1800* 417-418 (1950); Chesney 1562-1563.

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[5] The Senate, controlled by Federalists, quickly echoed Washington's censure. See 4 Annals of Cong. 794 (1794). In this context, the House debate (and its resolution in favor of the societies) is particularly telling because it was reported, blow by blow, in the papers, and the House was acutely aware that the country was following its deliberations. At stake was whether the House's prestige would be added to Washington's in condemning the societies. See Chesney 1562-1564, 1566.

When the draft was considered by the whole chamber, however, Thomas Fitzsimons proposed an amendment stating that the House could not "withhold our reprobation of the self created societies * * * which, by deceiving and inflaming the ignorant and the weak, may naturally be supposed to have stimulated and urged the insurrection." 4 Annals of Cong. 899 (1794).

In opposition to this proposed attack, William Giles emphasized its religious and other implications: "Associations of this kind, religious, political, and philosophical, were to be found in every quarter of the Continent. The Baptists and Methodists, for example, might be termed self-created societies. The people called the Friends were of the same kind. Every pulpit in the United States might be included in this vote of censure, since, from every one of them, upon occasion, instructions had been delivered, not only for the eternal welfare, but likewise for the temporal happiness of the people." *Id.* at 900. Apart from legal options such as treason prosecutions (if truly warranted), Giles argued, "[a]ssociations of this kind" should be left "unmolested." *Ibid.*

Others disagreed, but even the proponents of censure did not suggest that the societies were illegal, and few took issue with the right to assemble (as distinguished from the right to organize acts of violent dissent). Fisher Ames, for example, insisted: "The right to form political clubs has been urged, as if it had been denied. It is not, however, the right to meet, it is the abuse of the right after they have met, that is charged upon them." *Id.* at 922. Men who join such clubs "become bad citizens. If innocence happens to stray into such company, it is lost." *Id.* at 930. William Smith similarly dared anyone to "com-

pare a regular town meeting" to "the nocturnal meetings of individuals, after they have dined, where they shut their doors, pass votes in secret, and admit no members into their societies, but those of their own choosing." *Id.* at 902. Even so, he too emphasized that the "question before the House was not whether these societies were illegal or not, but whether they have been mischievous in their consequences." *Id.* at 902. William Vans Murray likewise saw censure as the House's "advice," and supported it even though he opposed abolishing the societies. *Id.* at 906. And Samuel Dexter, although "not for making laws against [the societies]," believed "the House were in the practice of expressing their sentiments on matters of that sort." *Id.* at 910.

On the fourth day of this extended debate, Madison spoke for the first time. He contended that "an action innocent in the eye of the law could not be the object of censure to a Legislative body." *Id.* at 934. He "knew of nothing in the proceedings of the Legislature which warrants the House in saying, that institutions confessedly not illegal were subjects of Legislative censure." *Id.* at 935. In response, though castigating associations who instigate "the blackest crimes," Dexter noted that "Mr. Madison had mentioned religious societies," and Dexter agreed, "they clearly could not be [prohibited by law]." *Id.* at 937. Thomas Carnes added his "hope" that "the day will never come, when the people of America shall not have leave to assemble, and speak their mind." *Id.* at 941.

Ultimately, the societies' defenders prevailed (although the President's censure was too much for the societies to survive, see Inazu 581). Fitzsimons' proposed response "was watered down by a large majori-

ty," and "there was no disparagement of the right to associate." Currie 192. Instead, the House passed a statement that was silent on the "self-created societies" that Washington had attacked, and vaguely referred only to "combinations of men" who had incited the Whiskey Rebellion. 4 Annals of Cong. 947-948 (1794).

Understandably, the societies saw this as a victory for the right of association. As one society put it, "in all probability, [the House's actions] fixed an eternal barrier, that will forever prevent another [attack] being made, and have erected a great sea mark by which our state pilots may avoid in [the] future, the rock upon which they lately lay nearly shipwrecked."[6] That "rock," of course, was the idea that the formation of groups such as the societies could be regulated by the government.

Indeed, very few Representatives believed that Congress had any right to do so. Those in favor of censure repeatedly disclaimed any intent to outlaw them. And those who believed that Congress could outlaw them pointed to their *acts* (*e.g.*, their alleged involvement in the Whiskey Rebellion), rather than their structure or meetings. Essentially, the argument in favor of curtailing the societies was that they had not assembled "peaceably."

The historical record thus reveals an understanding that citizens have a general right—protected by the Assembly Clause—to join together in groups for any peaceful purpose and to exclude others from their

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[6] Patriotic Society of County of Newcastle, Delaware, *Address to the People of the United States* (Jan. 8, 1795), in Foner 332.

assemblies. And that record demonstrates that this right was always understood to extend to groups religious as well as political.

B. The principles embodied in the historical understanding of free assembly are reflected in this Court's "freedom of association" precedents.

Just as the Speech Clause protects the incidents of speech (for instance, publishing a pamphlet), the Assembly Clause protects the incidents of assembly. And, although this case does not present the issue, this includes incidents that may be minimally or only secondarily expressive. Indeed, if only *expressive* assembly were protected, the House presumably would have accepted Sedgwick's proposal to strike the First Amendment's protection for assembly as redundant of its protection for speech.

Consistent with these principles, a long line of this Court's cases protects "freedom of association." Although these cases do not expressly invoke the history outlined above, they reflect the same understanding of the First Amendment—that it protects a right to associate for the purpose of speaking (or exercising religion) collectively, and that groups assembled for such purposes have control not only over their messages, but over their membership and organization.

1. Under these decisions, an association has a right to select members and leaders who share the association's beliefs—and to exclude those who do not. Indeed, as this Court has recognized, "[t]here can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members that it does not desire." *Roberts*, 468 U.S. at 623.

And "freedom of association plainly presupposes a freedom not to associate." *Dale*, 530 U.S. at 648 (quoting *Roberts*, 468 U.S. at 623) (alteration marks and ellipses omitted); see also *Rumsfeld* v. *Forum for Academic & Inst'l Rights, Inc.*, 547 U.S. 47, 69 (2006) (associational rights are implicated by rules that "directly interfere with an organization's composition").

This Court has frequently applied these principles to political parties. In that context, the Court has recognized that groups have a right not only to define their membership,[7] but "to identify the people who constitute the association, and to select a standard bearer who best represents [their] ideologies and preferences." *Eu*, 489 U.S. at 224 (internal quotation marks and citation omitted); also cf. *Mayor of Phila.* v. *Educ. Equal. League*, 415 U.S. 605, 615 (1974) (recognizing the problems involved in ordering a mayor to exercise his powers of appointment in a nondiscriminatory fashion).

These principles, however, are not limited to political parties. In *Hurley*, for example, the Court upheld the right of parade organizers to exclude a group with

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[7] *E.g.*, *New York State Bd. of Elections* v. *Lopez Torres*, 552 U.S. 196, 202 (2008) ("A political party has a First Amendment right to limit its membership as it wishes"); *Calif. Dem. Party* v. *Jones*, 530 U.S. 567, 574 (2000) (holding that a party can limit voting in the party primary to party members, in part because "a corollary of the right to associate is the right not to associate"); *Dem. Party* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981) ("[T]he freedom to associate for the common advancement of political beliefs necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only.") (internal quotation marks and citation omitted).

a dissenting message, "just as readily as a private club could exclude an applicant whose manifest views were at odds with a position taken by the club's existing members." 515 U.S. at 581. Similarly in *Dale*, the Court confirmed that "forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." 530 U.S. at 648.

2. The Church here did essentially the same thing as the groups in *Hurley* and *Dale*: It fired (*i.e.*, excluded) a commissioned minister who violated an important tenet of the organization. Although Perich characterizes her firing as retaliation for threatening suit under the ADA, in fact she was fired for what the Church concluded was *un-Christian* behavior—for insubordination and failing to participate in the Church's internal dispute resolution process.[8] See also *Calif. Dem. Party*, 530 U.S. at 577 (rejecting a rule that "forces political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival").

In essence, the Church concluded that Perich's conduct impeded, and that she was not sufficiently

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[8] As detailed in the Church's bylaws, that process is explicitly intertwined with Church doctrine and Scripture. See Pet. Br. 54; Pet. App. 77a-78a; see also 1 *Corinthians* 6:1-7 ("If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints? * * * The very fact that you have lawsuits among you means you have been completely defeated already.").

committed to, the Church's religious mission. Such judgments lie at the heart of any religious assembly or association. As Justice Brennan observed, "Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is * * * a means by which a religious community defines itself." *Amos*, 483 U.S. at 342 (concurring opinion). Thus, to deny the Church the ability to fire Perich for what it viewed as conduct inconsistent with its mission would be to deny the Church the very ability to "define itself."

Moreover, just as the Boy Scouts held out their leaders as exemplars to boys, their families, and the broader community, Perich's duties as a called teacher specifically included serving as a "Christian role model[]" to her students and "integrat[ing] faith into all subjects." Pet. App. 5a, 35a. And just as the Scouts could not be forced to accept a leader who, in their view, was acting in a manner contrary to their message (*Dale*, 530 U.S. at 661), the Church had every right to protect its message and integrity by releasing Perich. See also *Eu*, 489 U.S. at 231 n.21 ("By regulating the identity of the parties' leaders, the challenged statutes may also color the parties' message and interfere with the parties' decisions as to the best means to promote that message."). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." *La Follette,* 450 U.S. at 122 n.22 (quoting Laurence H. Tribe, *American Constitutional Law* 791 (1978)).

3. The Church in this case is entitled to protection that extends beyond what this Court has recog-

nized in the expressive associations context. First, by its terms and its history, the Assembly Clause protects the right to assemble *regardless* of the expressive purposes of such assembly. Second, as we explain in Part II, religious groups enjoy an additional layer of protection under the Free Exercise Clause. Unlike a pure expressive association case, therefore, applying the ministerial exception does not require "weighing" the burden on the Church's message imposed by Perich's suit. Compare *Dale*, 530 U.S. at 658-659 ("in [associational freedom] cases, the associational interest in freedom of expression has been set on one side of the scale, and the State's interest on the other"), with, *e.g.*, *Milivojevich*, 426 U.S. at 711 (reaffirming the "binding" effect of religious authorities' decisions in "cases of ecclesiastical cognizance") (citation omitted).[9]

Indeed, in many ways, religious assembly is the most highly protected form of all: The right of religious groups freely to organize themselves was a core feature of the First Amendment's original design. This is manifest not only in the history of the Assembly Clause and the logic of this Court's freedom of association decisions, but also in the Free Exercise Clause, to which we now turn.

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[9] Even if the Court's expressive association precedents did stand alone, thus requiring that the government's interest be weighed against the Church's expression, those precedents would foreclose Perich's claim. See, *e.g., Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-432 (2006) (under RFRA, the Government must prove not just a compelling interest in general, but a compelling interest in applying its policy in a particular case).

II. The Ministerial Exception Is Also Grounded In The Free Exercise Clause, Which Further Protects An Associational Right Of Religious Groups To Control The Internal Leadership Of Their Organizations.

The ministerial exception's protection for a religious group's right to choose its leaders and exemplars is deeply rooted in the history of the Free Exercise Clause—from the writings of John Locke, to Britain's wars of religion, to the experience of the American colonists. And this Court's decisions confirm that a church's freedom to choose such leaders lies at the core of free exercise.

A. Disputes about church leadership were a key inspiration for the First Amendment.

1. Locke was a chief inspiration to the Framers and supplied "the background political philosophy of the age." *City of Boerne* v. *Flores*, 521 U.S. 507, 540 (1997) (Scalia, J., concurring in part). Like this Court's later decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), Locke rejected individual religious exemptions from generally applicable laws. See Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1433-1435 (1990) (McConnell). And since *Smith,* the historical debate has focused largely on whether the Framers had a broader vision of free exercise than Locke. Compare *City of Boerne*, 521 U.S. at 538-542 (Scalia, J., concurring in part), with *id*. at 548-564 (O'Connor, J., dissenting). But no such debate is necessary concerning the ministerial exception, as it was already fully formed in Locke's own thought.

Locke was emphatic that religious institutions must be free to control their message and leadership as they see fit. Locke thus distinguished between the conduct of *individuals* and the institution of the *church*, which he defined as a "voluntary society of men" that cannot "be tied with any other bonds but what proceed from the certain expectation of eternal life." John Locke, *A Letter Concerning Toleration* 14-15 (Huddersfield 1796) (1689) (Locke). Because "the joining together of several members into this church-society * * * is absolutely free and spontaneous," Locke explained, "it necessarily follows, that the right of making [its] laws can belong to none but the society itself." *Id.* at 15-16.

Consistent with these principles, Locke expressly endorsed churches' right to choose their own members and leaders. This right included the unencumbered freedom to disassociate with anyone, for "no church is bound, by the duty of toleration, to retain any such person in her bosom." *Id.* at 19. The "right of * * * excommunication" was a "fundamental and immutable right," ensuring that a church "has power to remove any of its members who transgress the rules of its institution." *Id.* at 21.

This ability to remove "any" of a church's members necessarily includes the right to excommunicate church leaders or teachers who the church believes have "transgress[ed] the rule of its institution." And that authority implies that the church could choose to discipline a leader or teacher in some lesser manner—such as relieving the person of leadership or teaching responsibilities. Also cf. *Bouldin* v. *Alexander*, 82 U.S. (15 Wall.) 131, 139-140 (1872) (courts "cannot decide who ought to be members of the church").

Thus, although he was willing to constrain free exercise in other ways, Locke saw the institutional independence of the church in its leadership and membership decisions as an irreducible minimum of free exercise. And this fundamental freedom included the right both to choose and to remove leaders and teachers without state interference.

2. Locke's strong support for churches' autonomy over personnel was influenced by the "great * * * divisions" over the "order of rulers in the church" that had long preoccupied Britain. Locke 16. And just as it influenced Locke, the bloody history of religious strife in Britain loomed large in the minds of the Framers.

Notably, Britain's wars over religion were not only wars over articles of religious faith; they were also—and perhaps predominantly—wars over the leadership structure of the church. And as Locke and the Framers recognized, the only acceptable resolution was to let churches decide such leadership matters for themselves.

A leading source of religious strife during Locke's era involved clashes between Episcopal and Presbyterian views of "church polity"—the church's internal governance structure. Episcopal polity, associated with the Roman Catholic and Anglican churches, called for placing ecclesiastical authority principally in bishops. In contrast, Presbyterian polity, inspired by the Reformation and associated with the Puritans and many Protestant churches, called for governance by assemblies of elders—*i.e.*, "presbyters."

These opposing views of church polity formed key lines of demarcation in the English religious wars of the seventeenth century. King James I "persistently

favoured the [Episcopal] tendency in England." Felix Makower, *The Constitutional History and Constitution of the Church of England* 71 (1895) (Makower). And particularly in Scotland, where Presbyterianism was then ascendant, James worked "to transform slowly the presbyterian into an episcopal constitution." *Ibid.* Such challenges to the Presbyterian view engendered opposition from parliament, and "[w]ith more or less violence [disputes] continued to rage during the whole of James's reign." *Ibid.*

By the time Charles I took the throne, "the quarrel between king and parliament grew fiercer year by year" and "religious antagonism was an unceasing influence." *Id.* at 75. In 1640, Charles dissolved parliament and required all clergy to swear an oath against alteration of the church's existing Episcopal structure. *Id.* at 76. In addition to increasing the power of Anglican bishops in England, Charles "tried to impose Anglican bishops and establishment laws on Scotland." John Witte, Jr., *Prophets, Priests, and Kings: John Milton and the Reformation of Rights and Liberties in England*, 57 Emory L.J. 1527, 1532 (2008). The result: "the Scots acting in concert with a part of the English opposition marched into England." Makower 77; see also Carl H. Esbeck, *Dissent and Disestablishment: The Church-State Settlement in the Early American Republic*, 2004 BYU L. Rev. 1385, 1412 (2004).

Charles ultimately yielded to the opposition, and a reconstituted parliament exacted revenge. They impeached the chief minister of the crown for high treason, condemned him by a bill of attainder, and executed him. Makower 77. Newly emboldened, the Presbyterian dissidents also began dismantling the church's internal structure, impeaching many of the

bishops for high treason. *Id.* at 78-79. By 1642, the struggle erupted into all-out civil war.

The Presbyterians prevailed. Soon the bishops were replaced by presbyters, and the "episcopal constitution of the church, as it existed in England and Wales, was declared * * * to be abolished." *Id.* at 81.

But wars over the church's structure did not end. Rather, the fault lines shifted from a clash between Episcopal and Presbyterian polities to a dispute between the Presbyterians and the Congregationalists. Backed by Oliver Cromwell and the English army, the Congregationalists repudiated central church authority. The Congregationalist dissenters prompted yet another civil war, ultimately defeating the Presbyterians and convicting Charles I of high treason. *Id.* at 82-83.

Upon Cromwell's death and Charles II's ascension to the throne in 1660, the disputes took a backward turn. The Episcopalians regained a majority in Parliament, restoring the bishops and "declar[ing] that all ministers who had been ordained otherwise than by a bishop and who should not obtain episcopal ordination within a short time were *ipso facto* deprived of their offices." *Id.* at 89-90. The period was "characterized by extreme intolerance" toward the Protestant groups that had espoused Presbyterian and Congregationalist polities. *Id.* at 91.

Eventually, wars over the Church of England's structure gave way to peace. One term of this peace —set forth in the Toleration Act of 1689—was that the various Protestant groups be allowed to "build up their own organizations outside the [established] church." *Id.* at 95-96. Although Roman Catholics and others remained persecuted and the established

church officially favored, this was a landmark moment in the history of religious freedom. And it established the core principle of church autonomy over its own leadership—the very principle that lies at the heart of the ministerial exception today.

3. This history was not lost on the Framers, who reflected upon the "[t]orrents of blood [that] have been spilt in the old world" from religious strife. James Madison, *A Memorial and Remonstrance* 2 (1785). Indeed, the colonies too had suffered repeated conflict over the selection of ministers, which became further impetus for the Free Exercise Clause. See generally McConnell 1421-1437.

Even some of those who stood to benefit from state interference opposed it. The Presbyterian church of Virginia, for example, rejected an offer of government support for its ministers because such support would have "a tendency to render them independent, at length, of the churches whose ministers they are." *Memorial of the Presbytery of Hanover* (Oct. 1784), in *American State Papers Bearing on Sunday Legislation* 108 (Willard Allen Colcord ed., rev. 1911). "We hope that no attempt will be made," the church explained, "to interfere in the internal government of religious communities." *Id.* at 111.

This experience undoubtedly influenced the Framers. Even before the First Amendment's drafting, the notion of institutional autonomy over church leadership found expression in state constitutions specifically guaranteeing to religious *groups*—not just individuals—the right to free exercise. See Br. for Evangelical Covenant Church, et al. 15-16. And once the First Amendment was ratified, the right of religious groups to select their own leaders was understood to

be one of the rights protected by the Free Exercise Clause. As James Madison would later explain, under "the scrupulous policy of the Constitution"—which "guard[s] against a political interference with religious affairs"—"the selection of ecclesiastical individuals" and the appointment of church "functionaries" is an "entirely ecclesiastical" matter left to the church's own judgment. James Madison, Letter to Bishop John Carroll (Nov. 20, 1806), in 20 *Rec. Am. Catholic Hist. Soc'y* 63-64 (1909).

Moreover, even if Madison's statement "did not in fact espouse the broad principle of affirmative accommodation" rejected in *Smith*, see *City of Boerne*, 521 U.S. at 542 (Scalia, J., concurring in part), it strongly supports the basic principle of church autonomy over leadership. For that and the other reasons explained above, the First Amendment's protection for free exercise necessarily encompasses a broad protection for the autonomy of religious associations to choose those who will lead and represent them.

B. The Court has long protected the right of religious associations to control their organizational leadership.

Consistent with this history, this Court has long protected the right of religious groups to choose their own leaders without government interference. See, *e.g.*, *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 119 (1952); *Milivojevich*, 426 U.S. at 720; *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 17-18 (1929); *Bouldin*, 82 U.S. (15 Wall.) at 139-140. The ministerial exception is but one aspect of this established freedom.

1. The right of institutional control over church leadership is fundamentally different from an indi-

vidual's conscientious objection to a generally applicable law. That is because state control of religious leadership decisions treads on "the free exercise of an ecclesiastical right, the Church's choice of its hierarchy." *Kedroff*, 344 U.S. at 119. *Smith* itself recognized this right, noting that government may not "lend its power to one or the other side in controversies over religious authority." *Smith*, 494 U.S. at 877. And in so doing it echoed the Court's precedent that it "is the function of church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them." *Milivojevich*, 426 U.S. at 711 (citation omitted); accord *Gonzalez*, 280 U.S. at 16-17.[10]

Alone or in combination with the other constitutional principles discussed above and in Petitioner's brief, this imperative—to protect religious groups' right to exercise their faith through leaders and exemplars of their own choosing—compels reversal of the decision below. Clergy and religious leaders are a church's "lifeblood," the "chief instrument by which [it] seeks to fulfill its purpose." *McClure* v. *Salvation Army*, 460 F.2d 553, 558-559 (5th Cir. 1972). And the ministerial exception plays a vital role in ensuring that churches and religious organizations retain control over the selection and dismissal of their leaders.

Among those leaders are teachers in a church's religious schools. In light of the "admitted and obvious fact that the *raison d'être* of parochial schools is the

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[10] Although disputes involving church property generally can (and must) be resolved by civil courts, such disputes raise distinct concerns and may be resolved by "neutral principles of law." See generally *Jones* v. *Wolf*, 443 U.S. 595, 602-605 (1979).

propagation of a religious faith," teachers play a "critical and unique role * * * in fulfilling the mission of a church-operated school." *Catholic Bishop*, 440 U.S. at 501, 503 (citation omitted).

2. The truth of that statement is amply illustrated by this case. The stated purpose of the Church's school is to provide a "Christ-centered education" based on biblical principles. Pet. App. 4a-5a. Overt religious instruction is only one way the Church advances that purpose: it also expects its teachers to serve as "Christian role models" and to "integrate faith into all subjects." *Id*. at 5a, 35a. To that end, the Church has built its school around "called teachers" like Perich—trained ministers who have been "called" to serve God and the Church. See Pet. Br. 4-6 (explaining difference between lay and called teachers).

In this capacity, Perich led her class in prayer, conducted devotional exercises, taught religion classes, took her students to school-wide chapel services, and occasionally led those services herself. Pet. App. 4a. As a called teacher, Perich pledged "[t]o exemplify the Christian faith and life" and "to live in Christian unity with the members of the congregation and co-workers." J.A. 48. The history and precedent discussed above confirm the Church's right to choose, discipline, and dismiss individuals filling a role so vital to the Church's exercise of its faith.

3. The Sixth Circuit, however, concluded that Perich spent most of her day "teaching secular subjects." Pet. App. 20a. The court thus made *its own* judgment that Perich's so-called secular activities were more important to her role than the religious ones. That is a debatable theological judgment, to say the least,

and in all events a risky one for *the state* to make. Embedded within the judgment is a bias foreign to many religious faiths—that the quantity of devotional activity matters more than its quality.

The Sixth Circuit's judgment is also troubling for assuming that Perich's activities were "secular." Pet. App. 20a. This contrasts starkly with the way many religious traditions understand their faith—not to mention the good-faith description of Perich's position by her own employer. Only the most naïve view of religious schooling assumes that religious teachers model their faith only by lecturing about God.

In short, in operating its school and choosing its teachers, the Church is pursuing a religious mission and exercising its faith. Within that sphere, the Church cannot be required to tolerate a teacher who has transgressed its moral standards. Nor, having decided that Perich was no longer fit for the Church's ministry, can the Church be required to submit to Government review of its decision.

CONCLUSION

For *amici* and other churches and religious groups around the country, the right to control who teaches their faith, and who transmits it to the next generation, remains indispensible to the free exercise of religion. Especially when combined with the protections provided by the Assembly Clause, that right requires recognition of a robust ministerial exception—one sufficiently broad to encompass Petitioner's actions in this case.

The decision below should be reversed.

Respectfully submitted.

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APPENDIX A:
LIST OF *AMICI CURIAE*

The *International Mission Board of the Southern Baptist Convention* (IMB) is an entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination with more than 44,000 churches and 16.2 million members. To achieve its vision of seeing a multitude of every people, tribe, and tongue from around the world come to worship and exalt Jesus Christ as Lord and Savior, the IMB employs more than 5,000 Christian workers.

The *Ethics & Religious Liberty Commission of the Southern Baptist Convention* (ERLC) is the moral concerns and public policy entity of the SBC, the nation's largest Protestant denomination with more than 44,000 churches and 16.2 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. Religious freedom is an indispensible, bedrock value for SBC churches. To fulfill their God-ordained mission, SBC churches must be free to engage in activities that they discern God leads them to provide. In order to assure the missional integrity of these activities, they must be free to associate solely with those who share their beliefs and values across the entire spectrum of their religious mission.

The *Council of Hindu Temples of North America* is a voluntary association of Hindu Temples in North America. It is one of the largest Hindu umbrella bodies in North America, with a membership of over 100 Hindu Temples. The council advocates on behalf of Hindu Temples and Hindus in both the United States and Canada. The Council has an interest in

this case because it supports an interpretation of the ministerial exception that recognizes the religious nature of Hindu Temple workers such as priests, *swamis*, monks, *paricharakaras* (religious food preparers), *sthapatis* (religious architects), and *shilpis* (religious artisans). Although such roles may be unfamiliar to the secular court system, they have been recognized by Hindus as religious for millennia, and are integral to the religious life of Hindu Temples.

The *Mandaean Association of Massachusetts* (MAM) is an organization that seeks to preserve and maintain the Mandaean culture and traditions. The Mandaean religion is one of the oldest monotheistic faiths in the world. For the past 2000 years, Mandaeans have lived in Southwestern Iran and Southern Iraq, after originally emigrating there from Jerusalem. Today, they are the smallest and most vulnerable minority in Iraq. They number fewer than 60,000 people, scattered around the globe, threatened by total annihilation due to war and persecution. Mandaeans follow the teachings of Adam and their last teacher is John the Baptist. Adherents are expressly forbidden from carrying weapons, even for self-defense. Instead, the *Ginza Raba*—the chief Mandaean holy book— teaches to *oppose injustice bravely with words and knowledge, not iron.* Mandaeans therefore live their lives solely by peaceful means. In the past few years, few thousands of Mandaeans resettled in the United States of America, seeking the freedom of religion that this country cherishes and protects. MAM's work and commitment is to foster and protect the ancient true-Mandaean teachings. It joins this brief in support of protecting the autonomy of religious associations.

The *International Church of the Foursquare Gospel* is a Christian denomination that traces its founding to the inspired work of Aimee Semple McPherson beginning in Los Angeles in 1923. As a hierarchical church, the Foursquare Church has approximately 262,000 members and is organized into 14 districts across the United States. Its 1,865 U.S. churches are served by over 6,800 pastors called to ministry by the Foursquare Church. World-wide, the Foursquare Church has more than 64,000 churches and meeting places. According to the doctrine and practices of the Foursquare Church, the scope of the ministry of one who is called by God to that vocation extends to the "pulpit" of the class room. Foursquare has many licensed and ordained ministers serving it its colleges, secondary and primary schools, imparting the precepts of the faith along with other curriculum to their charges. Thus, the Foursquare Church has a core and vested interest in the question before the Court.