

No. 10-553

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**In the Supreme Court of the United States**

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HOSANNA-TABOR EVANGELICAL LUTHERAN  
CHURCH & SCHOOL,

*Petitioner,*

v.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, et al.,

*Respondents.*

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*On Writ of Certiorari to the United States  
Court of Appeals for the Sixth Circuit*

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**BRIEF OF AMICI CURIAE JEWISH EDUCATIONAL  
CENTER, ASSOCIATION OF CHRISTIAN SCHOOLS  
INTERNATIONAL, AND THE NORTH AMERICAN  
DIVISION OF SEVENTH-DAY ADVENTISTS OFFICE  
OF EDUCATION IN SUPPORT OF PETITIONER**

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June 17, 2011

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**INTEREST OF *AMICI CURIAE***<sup>1</sup>

The **Jewish Educational Center** (“JEC”) is an education system in Elizabeth, New Jersey, that provides an Orthodox Jewish education for students from pre-kindergarten through twelfth grade, including two high schools, the Rav Teitz Mesivta Academy and Bruriah High School. The Jewish Educational Center currently educates over 830 children from throughout the New York tri-state area and beyond. Among the alumni of the Jewish Educational Center are two U.S. Ambassadors and former Secretary of Homeland Security Michael Chertoff. The Jewish Educational Center has a two-fold mission: to prepare each child to be a moral, well-educated Orthodox Jew, strongly rooted in his or her faith and the land and people of Israel, and to provide a firm academic foundation that allows each student to excel in all of life’s educational, professional, and civic challenges. The JEC seeks to provide a comprehensive foundation for the total development of the students, including their intellectual, emotional, social, physical, and religious needs. The Jewish Educational Center believes that an essential component of this mission is the positive interaction of home, family, and school. This positive interaction ensures that each student will become a responsible, productive, cultured, educated American citizen of the Jewish faith. The yeshiva guides each of its students to recognize the obligation to one’s self,

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<sup>1</sup> Pursuant to this Court’s Rule 37, letters of consent from all parties for the filing of this brief have been submitted to the Clerk. *Amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief.



one's family, one's school, the larger Jewish community, and the world.

**The Association of Christian Schools International** (“ACSI”) is a worldwide organization dedicated to delivering the Gospel of Jesus Christ through faith-based education in primary and secondary schools. ACSI serves over 5,900 member schools, in over 100 countries, with an enrollment of more than 1.4 million students. ACSI believes that “God’s Word is the moral authority that informs all of our intellectual, spiritual, social and physical pursuits. Thus, true education of the person can only occur when all facets of learning are rooted in and viewed through the lens of God’s Word.” ACSI, therefore, aims to enable “Christian school students worldwide to acquire wisdom, knowledge, and a biblical worldview as evidenced by a lifestyle of character, leadership, service, stewardship, and worship.” ACSI believes that every person with whom students come into contact, especially the front-line educators who spend the most time with students, serves as a living example of the Gospel of Jesus Christ.

**The North American Division of Seventh-day Adventists Office of Education** also recognizes that the faith-based education of youth is foundational to the beliefs and mission of the church. Since the 1860s, the Seventh-day Adventist Church has had an interest in “propagating education” that is established upon “the philosophy that students at all levels of schooling possess individuality and should be educated to use their God-given capacities to become individuals of principle, qualified for any position of life.” Seventh-day Adventists also adhere to the philosophy that “education should be redemptive in nature, for the

purpose of restoring human beings to the image of God. ... Mental, physical, social, and spiritual health, intellectual growth, and service to humanity form a core of values that are essential aspects of the Adventist education philosophy.” The Seventh-day Adventists’ Education Department guides nearly 7,600 schools, over 80,000 teachers, and 1,545,000 students. The church critically relies on Seventh-day Adventist educational systems in fulfilling its core mission of “preaching, teaching and healing ministries.”

The ministerial exception and the application of the ecclesiastical abstention doctrine to faith-based schools and their teachers are vitally important to *amici* as the JEC, the ACSI, and the North American Division of Seventh-day Adventists Office of Education rely upon teachers who have and demonstrate a religious worldview in order to impart such a faith-based worldview on to the students. For the JEC, the ACSI, and the North American Division of Seventh-day Adventists Office of Education, teachers are primarily devoted to inculcating and fostering true faith through teaching every subject from a religious worldview. A teacher in such a faith-based school is, above all things, a minister or rabbi first.

### **SUMMARY OF THE ARGUMENT**

Faith-based schools are one of the primary means of perpetuating the faith and beliefs of a religious ministry. The persons at a faith-based school most responsible for instilling such faith and belief are the teachers. These teachers model lives of faith for their students, incorporate faith into every subject that they teach, and communicate the faith of their religious ministry to their students. One study of students in

Jewish day schools found that day school attendance is a significant factor in the religious and social development of Jewish students and a prominent factor even among students that already had a substantial Jewish background. Another study, of students in Seventh-day Adventist schools, found that maintaining a religious environment in schools was as important to the development of faith in the students as having a religious environment at home and attending church. No less than any other religious figure, then, a teacher in a faith-based school is a minister or rabbi, shaping and conveying the message of the religious ministry to the students. Religious schools must consider the same factors in hiring and firing their teachers that they make in hiring or firing a minister or rabbi who preaches in a church or synagogue. Both are fundamentally religious positions. The Free Exercise Clause, through the ministerial exception, protects from government interference decisions regarding whom to place in the spiritual functions of teaching, modeling, and perpetuating the faith and the manner in which those duties are divided and assigned.

Similarly, to avoid the courts' having to delve into theological matters and favor or disfavor one theological opinion over another, the ecclesiastical abstention doctrine has, for over one-hundred years, prohibited courts from considering matters of a ministry's governance, appointments, or internal affairs such as employment decisions. Courts are ill-equipped to engage in such religious parsing. The effect of a court's review of teacher employment decisions by faith-based educational institutions would be to choke off their voice for the particular religious faith and effectively determine for the faith-based organization who may or may not speak on its behalf.

**ARGUMENT****I. ONLY THROUGH APPLYING A BROAD MINISTERIAL EXCEPTION CAN THE VITAL ROLE THAT TEACHERS IN FAITH-BASED SCHOOLS PLAY IN PERPETUATING THE RELIGIOUS ORGANIZATION’S EXISTENCE, PURPOSE, AND FAITH BE PROTECTED.**

Aside from preaching from the pulpit, faith-based schools are the primary means of perpetuating the faith and beliefs of a religious ministry. This Court recognizes the “critical and unique role of the teacher in fulfilling the mission of a church-operated school.” *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 501 (1979). As the D.C. Circuit observed, “determination of whose voice speaks for the church is *per se* a religious matter.” *Minker v. Balt. Annual Conference of the United Methodist Church*, 894 F.2d 1354, 1356 (D.C. Cir. 1990). Likewise, multiple circuit courts recognize:

The relationship between an organized church and its ministers is its lifeblood. The Minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.

*McClure v. Salvation Army*, 460 F.2d 553, 558-59 (5th Cir.) (1972); *see also Natal v. Christian & Missionary Alliance*, 878 F.2d 1575, 1577 (1st Cir. 1989); *Minker v. Balt. Annual Conference of the United Methodist Church*, 699 F. Supp. 954, 955 (D. D.C. 1988); *cf. Dowd v. Soc’y of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988) (per curiam) (involving priest’s “membership rights” claim against missionary society); *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986); *Kaufmann*

*v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983); *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir. 1974).

Teachers are essential in diffusing a religious ministry's message, a primary function of faith-based schools, and one that is of vital interest and importance to the preservation and advancement of the beliefs of a religious body. *Rayburn v. Gen. Conference of Seventh-day Adventists*, 772 F.2d 1164, 1167–68 (4th Cir. 1985). In fact, the basis for the ministerial exception is founded upon the principle that “perpetuation of a church’s existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large.” *Id.* at 1168. Teachers in faith-based schools serve each of these roles through teaching and modeling a lifestyle demonstrating a religious worldview as they perpetuate the faith and mission of their religious ministry.

Brandeis University’s Maurice and Marilyn Cohen Center for Modern Jewish Studies and the Partnership for Excellence in Jewish Education, interested in learning how Jewish day schools support the educational and religious upbringing of their students, surveyed over 3,300 Jewish undergraduates. The results, published in a study entitled *The Impact of Day School: A Comparative Analysis of Jewish College Students*, show that attending a Jewish day school has a significant effect on the religious and social development of the students. The study found that

[a]lthough many undergraduates remain untouched by Jewish life during their college years and may feel distant from their Jewish roots,

the former day school attendees in the present study ... stand out from their public and private school peers in the importance that they attribute to being Jewish at this point in their lives. Perhaps just as noteworthy is that day schooling appears to significantly raise the salience of being Jewish for non-Orthodox students ....

Fern Chertok et al., *The Impact of Day School: A Comparative Analysis of Jewish College Students* 35 (ver. 1.2 2007). The effects of day school attendance were prominent even among those students who otherwise had strong Jewish backgrounds. As the study noted, “[t]he fact that day school attendance is such a strong predictor of Jewish campus involvement among the non-Orthodox is particularly impressive given the substantial Jewish backgrounds of the overall sample including those who never attended a day school.” *Id.* at 37. The effects of day school attendance on ritual observance were also significant. “It is clear that former day school attendees raised in Orthodox homes have the most consistent pattern of attendance at religious services, but the impact of day schooling on ritual observance can also be seen among those raised in non-Orthodox homes and even among those who experienced less than six years of day school.” *Id.* at 38.

Similarly interested in learning how much education in its faith-based schools promotes faith, the Seventh-day Adventists commissioned three studies of *every* primary- and secondary-school student in a Seventh-day Adventist school in the United States. These studies, called the Valuegenesis studies, incorporate two decades of research, which illuminate the role that Seventh-day Adventist schools have in

fostering spiritual faith. Ed Boyatt, "School Days, School Daze: Valuegenesis and Adventist Schools," in *Valuegenesis Ten Years Later* 309 (2004). When asked "How much has each of the following helped you develop your religious faith?" seventy-four percent (74%) of students responded that attending a Seventh-day Adventist school helped either "very much" (36%) or "somewhat" (38%). V. Bailey Gillespie and Michael J. Donahue, Ed Boyatt, and Barry Gane, *Valuegenesis Ten Years Later: A Study of Two Generations* 302 (2004). Significantly, fifty-three percent (53%) of students attributed positive development of their faith to their teacher's faith. *Id.* Seventy percent (70%) of students stated that weeks of prayer at school positively impacted their faith's development, and sixty-three percent (63%) of students recognized that Bible classes developed their faith. *Id.* Seventh-day Adventist schools that make quality teaching, Seventh-day Adventist values, and maintaining a Seventh-day Adventist climate core values were found to have a significant positive impact on the maturity of the students' faith, on intrinsic faith development, and on commitment to the church. The results indicate factors that "cannot be duplicated in the public environment." The study also found that sixty percent (60%) of students in Seventh-day Adventist schools feel that they can talk to their teachers about faith, while thirty percent (30%) of students stated that their teacher's faith was "very much" an influence in their religious life. Michael Donahue and V. Bailey Gillespie, *Valuegenesis2: North American Division of Seventh-day Adventists Valuegenesis Survey Frequencies: Grades 6 to 12 Grade Specific Frequencies* (2001). "Since many baptisms are directly related to schools, the role of teachers in commitment to Jesus cannot be overstressed." Gillespie et al., *Valuegenesis Ten Years*

*Later* 336. Finally, the research established that the integration of family, church, and religious school environments is vital for high faith maturity and denominational loyalty. *Id.* at 361. The studies found that without any of these supportive environments, only thirty-five percent (35%) reach a high faith maturity. *Id.* With a single religiously-supportive environment, fifty-five percent (55%) reach a high faith maturity. *Id.* With two of these environments, sixty-nine percent (69%) were found to develop a rich, growing faith life. *Id.* Finally, with the incorporation of all three environments—home, church, and school—that percentage “jumps to 75%” of students who develop a mature faith. *Id.* In studying those students who develop a “biased, self-serving” religious attitude, the incorporation of all three environments drops the percentage from 53% to only 3%. *Id.* In the end, the Seventh Day Adventists’ comprehensive research demonstrates that their faith-based schools and the teachers in those schools do play a vital role in perpetuating the faith, mission and beliefs of the church.

The Free Exercise Clause protects from government interference decisions regarding whom to place in the spiritual functions of teaching, modeling, and perpetuating the faith and the manner in which those duties are divided and assigned. *Petruska v. Gannon Univ.*, 462 F.3d 294, 307 (3d Cir. 2006) (“any restriction on the church’s right to choose who will carry its spiritual message necessarily infringes upon its free exercise right to profess its beliefs”). This is especially true in issues dealing with the terms of a religious leader’s calling and employment decisions based “largely on religious criteria.” *EEOC v. Southwestern Baptist*



*Theological Seminary*, 651 F.2d 277, 283 (5th Cir. 1981).

Faith-based schools utilize the school forum to teach religious beliefs and traditions and as an integral part of developing future generations' faith and knowledge. The JEC was established with a constitution that set forth the desire to introduce students to

the vast treasure of wisdom and righteousness based on the Torah and Talmud; to perpetuate traditional Judaism, and to instill into the hearts of the American Jewish youth a love for Americanism and the principles of democracy; to encourage Jewish youth to participate in the affairs of the Synagogue ... and to provide a proper environment for Jewish youth, free of radical and destructive influences and based on morality, rectitude and sanctity ....

Rivkah Teitz Blau, *Learn Torah, Love Torah, Live Torah: Harav Mordechai Pinchas Teitz: The Quintessential Rabbi* 126–27 (2001). Another proponent of Jewish day schools, the AVICHAI Foundation, “believes that Jewish day school programs should incorporate serious experiential education, since the religious goals of the schools are affective and practice-oriented as well as cognitive. Day schools therefore are encouraged to ... generate physical and spiritual environments that will inspire students to practice Judaism passionately.” *Deepening Religious Purposefulness*, The AVI CHAI Foundation, <http://avichai.org/projects-in-north-america/deepening-religious-purposefulness/> (last visited June 16, 2011).

Similarly, the ACSI believes that Christian schools are Biblically called to enable children to “mature to loving God with all their heart, mind, and soul (Matthew 22:37); growing in wisdom and stature (Luke 2:52); living in the world as salt and light (Matthew 5:13–14); and giving sacrificially of themselves and their resources reflecting the essence and love of the Christ who lives and dwells within them (Romans 12:1).” Ass’n of Christian Sch. Int’l, *ACSI Vision and Mission*, <http://www.acsi.org/tabid/535/itemid/20/default.aspx> (last updated Apr. 12, 2011). ACSI-affiliated schools consider religious education to be critical in academic and spiritual development in the formation of a life dedicated to the service of God and society. Ass’n of Christian Sch. Int’l, *ACSI Core Beliefs*, <http://www.acsi.org/tabid/535/itemid/3113/default.aspx> (last updated Jan. 5, 2009). Furthermore, ACSI-affiliated schools focus on challenging both students and educators to be involved in the Great Commission through evangelizing and discipling, thereby perpetuating the church’s very existence. *Id.*

In addition to utilizing faith-based schools to teach youth and spread the message of the faith, many Christian educators believe that Christian education and training for the young is a call of the Christian faith. The Bible provides explicit instruction regarding education of children in Christian principles and faith. Deuteronomy 6:6–7 (KJV) charges parents: “And these words, which I command thee this day, shall be in thine heart: and thou shalt teach them diligently unto thy children...” Again, in Ephesians 6:4 (KJV) the Bible commands, “And ye fathers, provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord.” Charles Spurgeon explained the vast religious significance of Christian

training for the young, stating that “parents sin when they omit religion from the education of their children ... let us never be guilty, as parents, of forgetting the religious training of our children; for if we do we may be guilty of the blood of their souls.” Charles H. Spurgeon, *Come, Ye Children: A Book for Parents and Teachers on the Christian Training of Children* (1897).

Though parents maintain the ultimate responsibility for the education of their children, “the school serves the Christian home.” Ass’n of Christian Sch. Int’l, *The Biblical Mandate for Christian Schooling*, <http://www.acsi.org/Resources/Publications/Newsletters/ChristianSchoolEducation/tabid/681/itemId/2413/Default.aspx> (last updated Mar. 26, 2009). Dr. Roy W. Lowrie Jr., a founder of ACSI, referred to the value and significance of school educators as “the gold in the bank” of the faith-based school, stating that they “cast a long shadow” upon the lives of the children they teach. Ass’n of Christian Sch. Int’l., *Authentic Christian Education*, <http://www.acsi.org/Resources/ReferenceLibrary/tabid/568/itemId/12/Default.aspx> (last updated Sept. 2, 2010). ACSI emphasizes that being a teacher in a Christian school is a deep and a “serious calling,” because “their Christian character and Christian worldview permeate their teaching. They are more than just teachers who happen to be Christians.” *Id.* A teacher’s responsibility in a Christian school goes to the very cornerstone of Biblical instruction. *Id.* Teachers in faith-based schools are a vital link in the chain between the message and mission of religious institutions and the future generations who will carry on that mission.

The Seventh-day Adventist Church also fundamentally relies on religious education as the Seventh-day

Adventist Church adheres to the philosophy that “education should be redemptive in nature, for the purpose of restoring human beings to the image of God ... Mental, physical, social, and spiritual health, intellectual growth, and service to humanity form a core of values that are essential aspects of the Adventist education philosophy.” Seventh-day Adventist Church, *Education*, <http://www.adventist.org/mission-and-service/education.html> (last visited Jun. 9, 2011). The Adventists depend heavily upon their schools for the sanctification and salvation of their youth. Dep’t of Educ. Seventh-day Adventist Church, *Departmental History*, <http://education.gc.adventist.org/history.html> (last visited Jun 13, 2011). Through their education systems their children are taught the values and lifestyles necessary to receive salvation. *Id.* This educational focus of their belief system dates back to the 1860s. *Id.* Since that time, the Adventists established an Education Department to direct nearly 7,600 schools, over 80,000 teachers, and 1,545,000 students. Dep’t of Educ. Seventh-day Adventist Church, *Mission and Scope*, <http://education.gc.adventist.org> (last visited Jun 9, 2011). The very “heart of the church’s mission” is brought about through “preaching, teaching and healing ministries.” Seventh-day Adventist Church, *Mission and Service*, <http://www.adventist.org/mission-and-service/index.html> (last visited Jun. 9, 2011).

While it is clear that faith-based schools are dedicated to religious education, academic excellence remains an important part of their educational programs. Holistic incorporation of secular academic subjects in faith-based schools in no way diminishes the significance and necessity of faith-based school environments in furthering religion and developing

faith. Specifically, ACSI promotes the incorporation of religious instruction into each area of study “[t]hat in all things [God] might have the preeminence.” Ass’n of Christian Sch. Int’l, *ACSI Core Beliefs*, <http://www.acsi.org/tabid/535/itemid/3113/default.aspx> (last updated Jan. 5, 2009) (citing Colossians 1:18). Thus, ACSI believes that the true mission and Biblical calling of Christian schools is evident even in traditionally secular academic subjects. Teachers in ACSI-affiliated faith-based schools are expected to provide knowledge and wisdom, as well as a religious worldview throughout the environment of their classroom and school day. Ass’n of Christian Sch. Int’l., *Authentic Christian Education*, <http://www.acsi.org/Resources/ReferenceLibrary/tabid/568/itemId/12/Default.aspx> (last updated Sept. 2, 2010). Biblical philosophy of education is integrated throughout all cultural contexts in the schools, which is “crucial to effective Christian schooling.” Ass’n of Christian Sch. Int’l., *ACSI Core Beliefs*, <http://www.acsi.org/tabid/535/itemid/3113/default.aspx> (last updated Jan. 5, 2009). Thus, teachers in ACSI-affiliated faith-based schools are utilized to permeate faith throughout the environment of every class or subject, leading students by example to both process information and think critically with a particular religious worldview. *Id.* The manner, timeframe, and method in which they choose to do so remains entirely within the discretion of the faith-based institution.

The Seventh-day Adventist Church maintains the philosophy that “students at all levels of schooling possess individuality and should be educated to use their God-given capacities to become individuals of principle, qualified for *any* position of life.” Seventh-day Adventist Church, *Education*, <http://www.>

adventist.org/mission-and-service/education.html (last visited Jun. 9, 2011) (emphasis added). Their central beliefs mandate that “principles of faith and learning are integrated into the life of each of its students and schools.” Dep’t of Educ. Seventh-day Adventist Church, *Mission and Scope*, <http://education.gc.adventist.org> (last visited Jun. 9, 2011). This type of balanced teaching environment is essential in enabling students to practically incorporate faith into diverse areas of their lives, a goal that must be preserved.

Due to the impossibility of “separating the message from the messenger, a religious organization’s fate is inextricably linked with those whom it entrusts with the responsibilities of preaching its word and ministering to its adherents.” *Natal*, 878 F.2d at 1578. Teachers in faith-based school forums serve to “shape and convey the message of the church” to children and parents alike. *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 308–09 (4th Cir. 2004). Such communications embody the essence of a minister or rabbi, operating a vital role to the church in furthering a religious message to future generations. *Id.* The religious environment, character, leadership, and worldview that teachers of faith-based schools simultaneously, teach, foster, and exhibit throughout the classroom is immeasurable by judicial standards. It is for such reasons that careful selection of educators in faith-based schools to assist parents in religious training and the inculcating of religious environments for their children is vital in perpetuating the faith. As teachers in faith-based schools are “integral” and “important to the spiritual and pastoral mission of the church,” government authorities are prohibited from interfering in the faith-based school’s organization and administration over them. *Rayburn*,

772 F.2d at 1168–69; *See also Southwestern Baptist*, 651 F.2d at 277; *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389, 1396–97 (4th Cir. 1990); *Scharon v. St. Luke’s Episcopal Presbyterian Hosps.*, 929 F.2d 360, 362–63 (8th Cir. 1991); *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996); *EEOC v. Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d 795, 797 (4th Cir. 2000).

For these reasons, teachers in faith-based schools must be considered ministers or rabbis, and civil courts are an inappropriate forum in which to evaluate their central role. It is both impractical and counter-productive for a court to attempt to measure the “primary duties” with a measuring stick or by the mere calculation of “religious” minutes in a classroom. For courts to do so is an exceedingly limiting approach, which discounts the holistic religious environment that faith-based schools strive to provide. Rather, courts must give wide deference to the religious organization’s discretion, abstaining from delving into ministry policy and internal governance, in order to effectively protect religious autonomy in faith-based schools.

**II. THE FIRST AMENDMENT’S ECCLESIASTICAL ABSTENTION DOCTRINE MANDATES A BROAD MINISTERIAL EXCEPTION, WHICH PROHIBITS COURTS FROM DELVING INTO MATTERS OF A RELIGIOUS MINISTRY’S GOVERNANCE, APPOINTMENTS, AND INTERNAL AFFAIRS SUCH AS TEACHER-EMPLOYMENT DECISIONS.**

For over one hundred years, civil courts have been forbidden to decide “a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the

church to the standards of morals required of them.” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, at 733 (1871). The United States Supreme Court defined the core of this First Amendment restraint on civil authority in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), determining that the First Amendment’s restraint on civil authority acknowledges a “spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Id.* at 116.

The foundational principle of the ecclesiastical abstention doctrine is that courts cannot decide cases that arise as a result of internal affairs of a religious organization such as governance and internal discipline. See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708–09 (1976) (holding that “religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them”); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 445–47 (1969); *Kedroff*, 344 U.S. at 114–16; *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16–17 (1929).

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who



unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

*Watson*, 80 U.S. at 726–32; see also *NLRB*, 440 U.S. 490; *New York v. Cathedral Acad.*, 434 U.S. 125 (1977). Any lesser standard, the Court determined, “would deprive [religious] bodies of the right of construing their own church laws, [and] would open the way to all the evils which we have depicted as attendant upon” a civil court’s intrusion on religious matters. *Watson*, 80 U.S. at 677-34 (mem.). As Justice Brennan asserted, ministries must be free to “select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected.” *Corp. of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 341 (1987); see also *Milivojevich*, 426 U.S. at 696 (church has interest in effecting binding resolution of internal governance disputes).

Faith-based schools and ministries are included in this category of vital religious organizations. *NLRB*,

440 U.S. at 501. Thus, teacher employment issues at faith-based schools warrant the application of the ecclesiastical abstention doctrine. Adjudication of any claims against religious bodies, including faith-based schools, arising from their religious procedure thus asks civil courts to punish a religious body for following their religious disciplinary process. Such interference and obstruction of religious freedom is not only prohibited by the religion clauses of the First Amendment, it is protected as “a matter which concerns theological controversy, church discipline, and ecclesiastical government.” *Watson*, 80 U.S. at 733.

The effect of a court’s review of teacher employment decisions by faith-based educational institutions would be to choke off their voice for the particular religious faith and effectively determine for the faith-based organization who may or may not speak on its behalf. This is impermissible. The “determination of whose voice speaks for the church is a per se religious matter.” *Alicea-Hernandez v. Catholic Bishop*, 320 F.3d 698, 604 (7th Cir. 2003) (quoting *Minker*, 894 F.2d at 1356). In this case and in thousands of faith-based schools throughout the country, the teacher speaks for the religious organization at all times through his or her teaching and actions. Once a court realizes that religious conduct is involved, the inquiry ends.

**CONCLUSION**

For the foregoing reasons, the Sixth Circuit's ruling in this case undermines First Amendment protection of faith-based schools in the United States. This Court should reverse the judgment of the Sixth Circuit.

Respectfully submitted,

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