No. 10-553

IN THE

Supreme Court of the United States

HOSANNA-TABOR EVANGELICAL LUTHERAN CHURCH AND SCHOOL,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND CHERYL PERICH,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* CHRISTIAN REFORMED CHURCH IN NORTH AMERICA, THE COUNCIL FOR CHRISTIAN COLLEGES AND UNIVERSITIES, CALVIN COLLEGE, AND KUYPER COLLEGE IN SUPPORT OF PETITIONERS

AARON D. LINDSTROM
Counsel of Record
JOHN J. BURSCH
MATTHEW T. NELSON
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, MI 49503
(616) 752-2000
alindstrom@wnj.com

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MOTION OF CHRISTIAN REFORMED CHURCH IN NORTH AMERICA, THE COUNCIL FOR CHRISTIAN COLLEGES AND UNIVERSITIES, CALVIN COLLEGE, AND KUYPER COLLEGE FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Amici curiae Christian Reformed Church in North America, the Council for Christian Colleges and Universities, Calvin College, and Kuyper College respectfully request leave of this Court to file the following brief in the above-captioned matter. In support of this motion, *amici curiae* state as follows:

Petitioner and one of the Respondents (the Equal Employment Opportunity Commission) have granted their consent to the filing of this brief. Consent letters for each of these parties are on file with the

Court. Counsel for Respondent Cheryl Perich, however, informed *amici* on November 23 that she would deny consent to the filing of the following brief, thus necessitating the Court's consideration of this motion.

The Christian Reformed Church in North America (the "CRC") is a denomination of just over 1,000 congregations in the United States and Canada. The CRC includes more than 230 congregations in the states composing the Sixth Circuit. The CRC is committed to Christian schools as the social agent that can make Christian education effective in the totality of life. Although the CRC does not itself operate Christian schools, it encourages its member churches to support Christian schools so that the churches' children can be educated in a way that acknowledges the lordship of Jesus Christ in all subject areas.

The Council for Christian Colleges and Universities ("CCCU") is an international association of intentionally Christian colleges and universities. Headquartered in Washington, D.C., the CCCU has 111 members and 37 affiliates in North America, including 22 colleges and universities in the Sixth Circuit. The CCCU exists to advance the cause of Christ-centered higher education and to help member institutions transform lives by faithfully relating all areas of scholarship and service to biblical truth.

Calvin College is an educational institution of the CRC. Located in Grand Rapids, Michigan, Calvin is one of the largest Christian colleges in North America with over 4,000 students and more than 100 academic programs. Calvin focuses on teaching, learning, and scholarship before the face of God. Calvin's curriculum and co-curriculum intentionally

emphasize the knowledge, skills, and virtues that students will need as they respond fully to the call of God in all areas of life.

Kuyper College is a ministry-focused, Christian leadership college that educates Christian leaders for ministry and service. Also located in Grand Rapids, Michigan, Kuyper provides students with the opportunity to see, understand, and live all of life through the lens of the Bible. Kuyper's curriculum is intended to awaken students to the need for possessing a solid, biblical worldview that gives every academic discipline significance as a tool for evangelism and discipleship, and for bringing social justice in Jesus' name.

As religious organizations devoted to incorporating their Christian faith into all of their activities, each of the *amici* will be able to "bring[] to the attention of the Court relevant matter not already brought to its attention by the parties" that will be "of considerable help to the Court. Rule 37.1.

For these reasons, the motion for leave to file the attached *amici curiae* brief should be granted.

Respectfully submitted.

AARON D. LINDSTROM
Counsel of Record
JOHN J. BURSCH
MATTHEW T. NELSON
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, MI 49503
(616) 752-2000

Counsel for Amici Curiae

November 26, 2010

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QUESTION PRESENTED

Based on this Court's First Amendment jurisprudence, the federal circuit courts have developed the ministerial exception, which bars most employment-related lawsuits brought against religious institutions by employees who play an important religious role. But the circuits are badly split as to the proper application of this doctrine to employees serving in roles other than as a pastor, priest, or rabbi. The Third, Fourth, Sixth, and D.C. Circuits have adopted a "primary duties" test. *Petruska* v. *Gannon Univ.*, 462 F.3d 294 (3d Cir. 2006); *Rayburn* v. *Gen Conf. of Seventh-day Adventists*, 772 F.2d 1164 (4th Cir. 1985); Pet. App. 16a–17a; *EEOC* v. *Catholic Univ.*, 83 F.3d 455 (D.C. Cir. 1996). The Second, Fifth, Seventh, and Ninth Circuits examine the totality of an employee's job duties and the nature of the underlying employment dispute. *Rweyemanu* v. *Cote*, 520 F.3d 198 (2d Cir. 2008); *Starkman* v. *Evans*, 198 F.3d 173 (5th Cir. 1999); *Schleicher* v. *Salvation Army*, 518 F.3d 472 (7th Cir. 2008); *Alcazar* v. *Corp. of the Catholic Archbishop*, 598 F.3d 668 (9th Cir. 2010). And the First, Eighth, Tenth, and Eleventh Circuits resolve ministerial-exception claims on a case-by-case basis. *Natal* v. *Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Scharon* v. *St. Luke's Episcopal Presbyterian Hosps.*, 929 F.2d 360 (8th Cir. 1991); *Skrzypczak* v. *Roman Catholic Diocese*, 611 F.3d 1238 (10th Cir. 2010); *Gellington* v. *Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299 (11th Cir. 2000). The question presented is:

What is the proper test to apply when determining whether an employee of a religious institution is a "ministerial" employee?

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BRIEF OF CHRISTIAN REFORMED CHURCH IN NORTH AMERICA, THE COUNCIL FOR CHRISTIAN COLLEGES AND UNIVERSITIES, CALVIN COLLEGE, AND KUYPER COLLEGE AS *AMICI CURIAE* SUPPORTING PETITIONERS

The above *amici curiae* respectfully submit that the petition for a writ of certiorari should be granted.[1]

INTEREST OF *AMICI CURIAE*

Proposed *amici curiae* are religious organizations that conduct both distinctly religious activities (such as the study of the Bible, prayer, training in theology, and worship services) and a wide range of educational and other activities that serve social needs as an exercise of religious conviction. These institutions (and those other religious institutions that the *amici* represent) all exist to provide training in a Christian worldview across all subject matters.

Like many other religious organizations, proposed *amici* are guided by their beliefs to carry out their activities. Proposed *amici* are committed to applying Christian doctrine and belief to all areas of human endeavor. The Sixth Circuit's decision in this case has significant implications for religious employment decisions by these proposed *amici*. Specifically, these institutions reject the sacred/secular distinction adopted by the Sixth Circuit as contrary to

[1] Pursuant to this Court's Rule 37.6, *amici curiae* 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 the *amici*, their counsel, and their members made a monetary contribution to the preparation or submission of this brief.

their core religious beliefs. The Sixth Circuit's decision thus requires courts to impose their own view as to whether a religious institution's employee's duties are "religious." Such questions are the very type of entanglement with religion that the ministerial exception was created to avoid.

The interests of the proposed *amici*, and their religious mission and character, are set forth in the accompanying motion for leave to file a brief as *amici curiae*.

STATEMENT

The ministerial exception flows from both of the First Amendment's Religion Clauses and preserves the right of religious institutions to make hiring decisions free from government interference when those decisions concern employees who play an important religious role in the institution. In this case, the Sixth Circuit decided that a teacher employed by a church-operated school did not fall within the ministerial exception even though the teacher's job description consisted entirely of spiritual duties: her job description obligated her "[t]o exemplify the Christian faith and life," "to lead others towards Christian maturity," to promote "Christian education," "[t]o exemplify Christian discipleship and witness," and "[t]o teach faithfully the Word of God." The church tasked her with fulfilling these religious duties by serving as a third- and fourth-grade teacher in the church's school. In her role as a teacher, she was to teach a religion class four days a week, lead her class in prayer three times a day, lead the students in devotions each morning for five to ten minutes, and "integrate faith in all subjects," including the math, English, reading, science, and music classes she taught. Like the school in this case, the

amici employ numerous instructors with similar religious and spiritual duties.

Even though this Court has expressly recognized that the very reason church-operated schools exist is for "the propagation of a religious faith," *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 503 (1979), the Sixth Circuit concluded that the teacher's "primary" duties were secular. It reached this conclusion not because of anything in her job description, but because she spent "approximately six hours and fifteen minutes of her seven hour day teaching" what the Sixth Circuit decided were "secular subjects," and only 45 minutes on what the Sixth Circuit deemed to be religious subjects. *EEOC* v. *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 597 F.3d 769, 772, 780 (6th Cir. 2010). The Sixth Circuit construed the teacher's admission that she could "only recall two instances in her career when she introduced religion into secular subjects," *id.* at 773, as demonstrating that the school did not intend her to engage in religious activity, rather than an independent reason that would support her termination.

This result directly conflicts with a decision of the Fourth Circuit, *Clapper* v. *Chesapeake Conference of Seventh-Day Adventists*, 166 F.3d 1208, 1998 WL 904528 (4th Cir. 1998), which held that a similarly situated teacher fell squarely within the scope of the ministerial exception. What is more, the Sixth Circuit's formulaic approach disregards important First Amendment principles. The implications of the Sixth Circuit's decision extend far beyond the religious-school setting to implicate employment decisions made by religious organizations throughout the Sixth Circuit. *Amici curiae* respectfully request that the Court grant the petition for a writ of certiorari,

reject the primary-duty analysis adopted by the Sixth Circuit, and instead adopt a standard for the ministerial exception that focuses on the employee's role in the religious organization.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's decision undermines First Amendment principles recognized by this Court and conflicts with the decisions of other courts including, most notably, the Fourth Circuit.

The ministerial exception arises from the interplay of employment laws and the First Amendment to prevent courts from trammeling on religious organizations' constitutional rights of free exercise of religion and to avoid excessive judicial entanglement in religious decisions. To determine whether the ministerial exception applies, courts first determine whether the organization is religious and then consider whether the employee's position is "ministerial." Only the second issue is contested here.

The ministerial exception applies not just to ordained ministers but also to certain other employees of religious institutions. *Hollins* v. *Methodist Healthcare, Inc.*, 474 F.3d 223, 225 (6th Cir. 2007). In *Hollins*, the Sixth Circuit reasoned that the "function of the plaintiff's employment position" is dispositive. *Id.* (citing *Rayburn* v. *Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985)). Specifically, if the function of the position is to teach, spread the faith, govern the church, supervise a religious order, or supervise or participate in worship and religious rituals, the position is ministerial. *Id.* Accordingly, courts have found that directors of music, communications directors, and religious-school teachers can all be ministerial positions. *EEOC* v.

Roman Catholic Diocese of Raleigh, N.C., 213 F.3d 795 (4th Cir. 2000); *Alicea-Hernandez* v. *Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003); *Clapper*, 166 F.3d 1208.

The application of the ministerial exception to teachers in religious organizations is especially appropriate. As this Court has emphasized, teachers play a "critical and unique role . . . in fulfilling the mission of a church-operated school." *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 501 (1979). Because of "the admitted and obvious fact that the *raison d'etre* of parochial schools is the propagation of a religious faith," *id.* at 503 (quotations omitted), "[r]eligious authority" in a church-operated school "necessarily pervades the school system," such that even when teaching "secular subjects," a teacher may "intertwine[]" "religious doctrine" with "secular instruction." *Id.* at 501 (emphasis and quotations removed). This is one of the reasons why some parents choose to incur the expense of sending students to private religious schools, rather than sending them to public schools. Based on this recognition that teachers at religious schools may "involv[e] some aspect of faith or morals in secular subjects," *id.*, this Court decided in *NLRB* that allowing the National Labor Relations Board to "exercise jurisdiction over teachers in church-operated schools" would inescapably raise "serious First Amendment questions." *Id.* at 504. In short, a teacher or professor is "an important instrument in a faith-based organization's efforts to pass on its faith to the next generation." *Coulee Catholic Schs.* v. *Labor & Indus. Review Comm'n*, 768 N.W.2d 868, 890 (Wis. 2009).

The primary-duty analysis the Sixth Circuit adopts here creates the very problem of excessive en-

tanglement that the ministerial exception is intended to avoid.

A. The primary-duties test does not sufficiently protect First Amendment freedoms.

The circuit courts have developed the ministerial exception based on "a long line of Supreme Court cases that affirm the right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *EEOC* v. *Catholic Univ. of Am.*, 83 F.3d 455, 462 (D.C. Cir. 1996) (quoting *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). The doctrine prevents courts from considering "claims involving the employment relationship between a religious institution and its ministerial employees." *Hollins*, 474 F.3d at 225.

The doctrine effectuates both of the Religion Clauses of the First Amendment. *Tomic* v. *Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006). It protects free exercise because, "like an individual, a church in its collective capacity must be free to express religious beliefs, profess matters of faith, and communicate its religious message," and therefore "the church as an institution must retain the corollary right to select its voice." *Petruska* v. *Gannon Univ.*, 462 F.3d 294, 306 (3d Cir. 2006). "Accordingly, the process of selecting a minister"—or of deciding to fire one—"is per se a religious exercise." *Id.*

The ministerial-exception doctrine advances the Establishment Clause by preventing "a constitutionally impermissible entanglement with religion if the church's freedom to choose its ministers is at stake."

Alcazar v. *Catholic Archbishop of Seattle*, 598 F.3d 668, 672 (9th Cir. 2010). Indeed, the Establishment Clause broadly bars inquiry into the employment decisions of churches and other religious institutions because "[e]ntanglement has substantive and procedural components": "'It is not only the conclusions that may be reached by [the court] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.'" *Id.* at 672–73 (quoting *NLRB*, 440 U.S. at 502). As Judge Posner has explained, "[I]n investigating employment discrimination claims by ministers against their church, secular authorities would necessarily intrude into church governance in a manner that would be inherently coercive, even if the alleged discrimination were purely nondoctrinal." *Tomic*, 442 F.3d at 1039. Consequently, the courts' analytical focus when applying the doctrine is on whether the action taken involves a ministerial position, not on the reasons for the decision. *Roman Catholic Diocese of Raleigh*, 213 F.3d at 801 ("The exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision. The church need not, for example, proffer any religious justification for its decision."); *Catholic Univ. of Am.*, 83 F.3d at 465 ("The focus under the ministerial exception is on the action taken, not possible motives . . . .").

The Sixth Circuit applied the "primary duties" test, which considers an employee to be a minister "if 'the employee's primary duties consist of *teaching*, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.'" *Hosanna-Tabor*, 597 F.3d at 778 (emphasis added). To assess the position's primary duties, courts consider the mix of sa-

cred and secular duties. See *id.* at 779–80. But courts attempting to characterize duties as sacred or secular results in the very entanglement with religion that the ministerial-exception doctrine was adopted to avoid. See *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 336 (1987) (recognizing that the line between religious and secular activities "is hardly a bright one"); *Alcazar*, 598 F.3d at 675.

The premise that a religious teacher is acting in a non-religious manner when teaching a secular subject, such as math or English, ignores the very reason a religious school exists. See *NLRB*, 440 U.S. at 503 ("[T]he *raison d'etre* of parochial schools is the propagation of religious faith."); see also *Coulee Catholic Schs.*, 768 N.W.2d at 882 (stating that it "minimize[s]" religion to "call[] a faith-centered social studies class, for example, 'secular' because it does not involve worship and prayer"); *Amos*, 483 U.S. at 336 ("an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission"). Moreover, the "prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133 (1977); see also *Clapper*, 166 F.3d at *2 (giving examples of incorporating faith into "secular" classes, including "teaching of the influence of religion on the events of history in social studies classes"). Many religious schools or universities expect teachers and professors to approach all of their subjects from a religious perspective. See, e.g., http://www.calvin.edu/about/mission.htm ("[Calvin College] offer[s] education that is shaped by Christian faith, thought, and prac-

tice."). For example, *amici* believe and teach that God's orderly nature is reflected in the scientific process (and indeed provides the very basis for the scientific method), that there are norms established by God for all areas of human endeavor including such purportedly secular subjects as English and arithmetic, and that all activities are to be done for the glory of God. Accordingly, the very process of making distinctions between what is "sacred" and what is "secular" in the context of a religious educational institution requires courts to inquire into the school's curriculum (to determine exactly what is taught in each class) and to divine what is and what is not religious.

Amici recognize that application of the ministerial exception requires some distinctions between religious and non-religious activity, but the primary-duties test involves more entanglement with religion than necessary. Instead, *amici curiae* believe the Court should adopt a less-intrusive test for whether a position is ministerial, and hold that "if a person (1) is employed by a religious institution, (2) was chosen for the position based largely on religious criteria, and (3) performs some religious duties and responsibilities, that person is a 'minister' for purposes of the ministerial exception." *Alcazar*, 598 F.3d at 676 (internal quotations omitted); *Starkman* v. *Evans*, 198 F.3d 173, 176 (5th Cir. 1999). This test provides far less entanglement than the primary-duties analysis adopted by the Sixth Circuit.

B. Even if the Court adopts the primary-duties test, the Court should reject the Sixth Circuit's quantitative analysis.

The Sixth Circuit's decision here demonstrates the fundamental flaw in applying the primary-duties

analysis in a quantitative as opposed to qualitative manner. The point of this test is to determine "'whether a position is important to the spiritual and pastoral mission of the church.'" *Rayburn*, 772 F.2d at 1169; accord *Catholic Univ. of Am.*, 83 F.3d at 461. But the quantitative approach adopted by the Sixth Circuit does far less—it assumes importance is shown by time spent on particular tasks.

This assumption bears little connection with reality, even in a secular context. Under this approach, one would conclude that the primary duty of a soldier is to train for war, not to fight in war, given that soldiers typically spend far more time training than they do in actual combat. But see http://www.army.mil/info/organization/ ("The Army's mission is to fight and win our Nation's wars."). And in the religious context, it makes even less sense. As the Wisconsin Supreme Court recently explained when "reject[ing] a primary duties test that looks to see . . . whether a majority of the employee's time is spent on quintessentially religious tasks," "[t]his narrow view does not, in our view, sufficiently respect the constitutional imperatives of the free exercise of religion." *Coulee Catholic Schs.*, 768 N.W.2d at 882. Properly weighing the importance of the teacher's function in fulfilling the church's mission, in contrast, "gets to the real heart of the ministerial exception, which is preventing the state from intruding into the mission of religious organizations or houses of worship." *Id.* at 884.

Furthermore, applying this hours-based approach outside the teaching context would be no better. That approach would mean that a pastor whose sole function was to run a charity such as a church's homeless shelter, a task that could be described as

secular, would not satisfy the "primary duties" test. The Ninth Circuit has criticized the "primary duties" test for just this reason: "[T]he underlying premise of the primary duties test—that a minister must 'primarily' perform religious duties—is suspect. A religious organization can constitutionally require its ministers or ministers-in-training to spend a year volunteering in urban areas in the United States." *Alcazar*, 598 F.3d at 675.

The Sixth Circuit's adoption of this quantitative approach creates a conflict with decisions of other courts, as noted in Hosanna-Tabor's petition.[2] Had this case arisen in the Fourth Circuit or in the Michigan state courts, it would have reached a different outcome. In *Clapper*, the Fourth Circuit applied the ministerial exception to conclude the federal courts did not have jurisdiction to address the employment-related claims of a former teacher at a school operated by the Seventh-Day Adventist Church. 1998 WL 904528. Before he was terminated, the teacher had "on a daily basis . . . taught Bible," "led his students in prayer" at least three times a day, "conducted worship each day with his students for approximately ten minutes," and incorporated theology into the traditional academic cur-

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[2] Another petition filed the same day as Hosanna-Tabor's further highlights the need for this Court to clarify the extent to which the First Amendment's protections prevent the state from interfering with the internal decisions of religious organizations. See Pet. for Writ of Cert., *Cooke* v. *Tubra* (No. 10-559) (presenting the question whether a pastor's defamation claim, arising from the church's decision to explain to its congregation why it fired him, is barred by the First Amendment).

riculum. *Id.* at *4. Although the terminated teacher "attempt[ed] to downplay the ministerial nature of his former teaching positions . . . by asserting that the time he spent instructing his students in Bible and leading them in worship constituted only 10.6 percent of his work week," *id.*, the Fourth Circuit reasoned that "[t]he primary duties test 'necessarily requires a court to determine whether a position is important to the spiritual and pastoral mission of the church.'" *Id.* at *6. Noting "the primary purpose of Seventh-day Adventist elementary education is the redemption of each student's soul" and that the Seventh-Day Adventist Church relies heavily upon its full-time, elementary school teachers to carry out its sectarian purpose," the Fourth Circuit concluded that "the primary duties of full-time teachers at elementary schools operated by the [church's conference] consist of teaching and spreading the Seventh-day Adventist faith and supervising and participating in religious ritual and worship." *Id.* at 7. In short, when faced with facts nearly identical to this case (indeed, even the percentage of time is equivalent: the plaintiff-teacher here spent 10.7 percent of her day on religious subjects), the Fourth Circuit did not measure the importance of the teacher's duties by quantifying the hours he spent on certain tasks, but by examining the importance of his role in carrying out the school's religious purpose.

Similarly, this case would likely have reached the opposite result had Ms. Perich pursued her claims in state court. The Michigan Court of Appeals recently held that a teacher at a Catholic elementary school fell within the scope of the primary-duties test despite her argument that a majority of the classes she taught were in arithmetic, and that she spent a minority of her work time teaching religion.

Weishuhn v. *Catholic Diocese of Lansing*, 287 N.W. 2d 211 (Mich. Ct. App. 2010). Her "argument [was] based on the premise that teaching mathematics is secular," but the court correctly recognized that "teaching 'secular' classes is not necessarily 'purely secular' in the context of religious schools." *Id.* at 218. Looking at all of the circumstances of her employment, the court concluded her duties were "primarily religious." *Id.* The Michigan court (like the Fourth Circuit) applied a qualitative, not quantitative, analysis of whether the ministerial exception applied.

Reaching the opposite conclusion as the Fourth Circuit and the Michigan Court of Appeals, the Sixth Circuit's decision here deprives religious institutions in the Sixth Circuit of specific protections arising from both the Free Exercise and the Establishment Clauses. Under the Sixth Circuit's ruling, courts in the Sixth Circuit may insert themselves into the religious employment decisions of churches, Jewish schools, Protestant universities, Muslim charities, and Catholic hospitals to review those decisions if the employee spends at least 51% of his time on what the court considers to be "secular" activities (such as teaching a math class or running a homeless shelter). Even though these organizations exist to carry out a religious mission and even if the church wrote the employee's job description to state that her primary duty is, as here, to "teach the Word of God," a court in the Sixth Circuit can conclude that the employee does not fall within the ministerial exception created by the First Amendment. Substituting its secular judgment for the religious organization's view of the employee's role, the court can then apply laws like the ADA and Michigan's Persons With Dis-

abilities Civil Rights Act to dictate to the church who it must employ in carrying out its spiritual mission.

Accordingly, even if the Court does not reject the primary-duty analysis outright, *amici* urge the Court to reject the Sixth Circuit's quantitative approach in favor of a qualitative approach that focuses on the importance of a position's "religious" duties to the overall mission of the religious organization.

CONCLUSION

In the end, it is the religious organization that must decide how to fulfill its spiritual mission, and to do that, it may define the duties of its employees. When it has done that, as here, courts are ill-equipped and without authority to second-guess those decisions, particularly by relying simply on the amount of time the employee spends on certain "secular" tasks and especially when the employer sees those tasks as spiritual, rather than secular. For these reasons, the *amici* respectfully request that this Court grant the school's petition for a writ of certiorari and then reverse the decision of the Sixth Circuit.

Respectfully submitted.

AARON D. LINDSTROM
Counsel of Record
JOHN J. BURSCH
MATTHEW T. NELSON
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, MI 49503
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