

Nos. 19-267, 19-348

In the
Supreme Court of the United States

OUR LADY OF GUADALUPE SCHOOL,
Petitioner,

v.

AGNES MORRISSEY-BERRU,
Respondent.

ST. JAMES SCHOOL,
Petitioner,

v.

DARRYL BIEL,
Respondent.

On Writs of Certiorari to the United States
Court of Appeals for the Ninth Circuit

**BRIEF *AMICI CURIAE* OF BILLY GRAHAM
EVANGELISTIC ASSOCIATION, SAMARITAN'S
PURSE, FORCEY CHRISTIAN SCHOOL,
CONGRESSIONAL PRAYER CAUCUS
FOUNDATION, INTERNATIONAL CONFERENCE
OF EVANGELICAL CHAPLAIN ENDORSERS,
NATIONAL LEGAL FOUNDATION, AND PACIFIC
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STATEMENTS OF INTERESTS¹

The **Billy Graham Evangelistic Association** (BGEA) was founded by Billy Graham in 1950 and, continuing the lifelong work of Billy Graham, exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all it can by every effective means available to it and by equipping the church and others to do the same. BGEA ministers to people around the world through a variety of activities including Decision America Tour prayer rallies, evangelistic festivals and celebrations, television and internet evangelism, the Billy Graham Rapid Response Team, the Billy Graham Training Center at the Cove, and the Billy Graham Library. Through its various ministries and in partnership with others, BGEA strives to represent Jesus Christ in the public square, to cultivate prayer, and to proclaim the Gospel. BGEA believes that, to fulfill its mission, it is essential that its employees share its religious beliefs and acknowledge that those beliefs are put into action through BGEA in pursuit of its religious mission and objectives.

Samaritan's Purse is a nondenominational, evangelical Christian organization formed in 1970 to provide spiritual and physical aid to hurting people around the world. It seeks to follow the command of

¹ The parties have consented to the filing of this brief in writing. No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Jesus to “go and do likewise,” true to the story of the Samaritan who helped a hurting stranger. Samaritan’s Purse operates in over 100 countries providing emergency relief, community development, vocational programs, and resources for children, all in the name of Jesus Christ. Samaritan’s Purse believes that its mission can only be properly fulfilled by employees who share its religious commitments.

Forcey Christian School (FCS) in Silver Spring, Maryland, is a K-8 school serving the local community. FCS is a ministry of Forcey Bible Church and is co-located on the church grounds. Forcey Bible Church is a non-denominational, Christian church whose mission is to live out the gospel by service to others, biblical teaching, and evangelization, and FCS is an important outreach of the church. Its teachers and administrative staff are required to endorse a statement of faith and to abide by standards of conduct consistent with their profession of biblical Christianity. All teachers engage in religious instruction of their students, but teachers are not required to be ordained or to have a formal religious degree.

The **Congressional Prayer Caucus Foundation (CPCF)** is an organization established to protect religious freedoms (including those related to America’s Judeo-Christian heritage) and to promote prayer (including as it has traditionally been exercised in Congress and other public places). It is independent of, but traces its roots to, the Congressional Prayer Caucus that currently has over 100 representatives and senators associated with it. CPCF reaches across all denominational, socioeconomic, political, racial, and cultural dividing

lines. It has an associated national network of citizens, legislators, pastors, business owners, and opinion leaders hailing from thirty-three states. To fulfill its religious mission, it requires its employees to be co-religionists.

The **International Conference of Evangelical Chaplain Endorsers (ICECE)** has as its main function the endorsement of chaplains who lack a denominational structure for endorsement. This method for endorsing chaplains for the military and other organizations avoids the entanglement with religion that the government would otherwise have if it determined chaplain endorsements. ICECE safeguards religious liberty for chaplains and all military personnel.

The **National Legal Foundation (NLF)** is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, including those in California, seek to ensure that an historically accurate understanding of the Religion Clauses is presented to our country's judiciary. NLF often represents religious organizations that do not easily fit into either a church or church school mold. But those organizations have important ministries fueled by their religious beliefs—for example, work in disaster relief and “lifestyle” evangelization—that often do not involve explicit teaching or conducting standard “worship services” or “rituals.”

The **Pacific Justice Institute (PJI)** is a non-profit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its

founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area. PJI often represents religious organizations that do not easily fit into either a church or church school mold but which have important ministries fueled by their religious beliefs. Those organizations sincerely believe that many of their employee positions should be filled by co-religionists in order to perform the organization's ministries to which they are called.

SUMMARY OF THE ARGUMENT

This Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*² confirmed that the Constitution requires the exemption of at least some employees of some religious organizations from nondiscrimination laws. Now this Court should articulate more specifically the circumstances in which the exception applies.

In *Hosanna-Tabor*, while eschewing setting out any rigid test, this Court did establish three important principles that help define the scope of the ministerial exception. One, the First Amendment safeguards from interference by the State at least some employment decisions of religious organizations that are not prototypical worship centers, like religious schools. Two, the ministerial exception covers more than just the top-tier officials of religious

² 565 U.S. 171 (2012).

organizations. And, three, an employee need not perform exclusively what an outsider might consider “religious” activities to qualify as a “minister” under the exception.

Amici either are, or commonly represent, organizations that are not traditional places of worship, but, nevertheless, are religious organizations because they are founded for religious reasons, affirm religious principles, and carry out religiously inspired ministries. One *amicus* is a church school, but of a non-denominational character, unlike the Lutheran Church—Missouri Synod school involved in *Hosanna-Tabor*. These religious organizations and ones like them are protected by the religious exception, which at a most basic level includes decisions of the religious organization as to who best carries out its religious mission. Justice Brennan rightly 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.”³

In deciding the contours of the “ministerial exception,” this Court should hew to the overriding demands of the Religion Clauses that the government keep out of the business of divining religious doctrine and that it refrain from second-guessing judgment calls of religious organizations about how they should perform their mission. To do

³ *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring).

so, this Court should adopt the standard advocated by Justice Thomas in his concurring opinion in *Hosanna-Tabor*, which requires a court “to defer to a religious organization’s good-faith understanding of who qualifies as a minister.”⁴

ARGUMENT

I. The Ministerial Exception Protects Religious Organizations Other Than Houses of Worship and Their Schools.

From the outset, the courts of appeal have applied the ministerial exception to religious organizations other than traditional houses of worship such as churches, synagogues, and mosques. In two of the leading cases, the Fifth and Seventh Circuits applied it to the Salvation Army, a religious organization engaged in both evangelistic and social welfare activities.⁵ The Fourth Circuit applied it to a Jewish nursing home.⁶ The Sixth and Eighth Circuits, to denomination-related hospitals.⁷ The D.C. and Third Circuits, to Catholic universities.⁸

⁴ 565 U.S. at 196 (Thomas, J., concurring).

⁵ See *Schleicher v. Salvation Army*, 518 F.3d 472, 475 (7th Cir. 2008); *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972).

⁶ See *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 310 (4th Cir. 2004).

⁷ See *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 223-25 (6th Cir. 2007); *Scharon v. St. Luke’s Epis. Pres. Hosps.*, 929 F.2d 360, 362-63 (8th Cir. 1991).

⁸ See *Petruska v. Gannon Univ.*, 462 F.3d 294, 303-07 (3d Cir. 2006); *EEOC v. Catholic Univ.*, 83 F.3d 455, 460-63 (D.C. Cir. 1996).

And, of course, this Court, in *Hosanna Tabor* itself, applied it to a church-affiliated, K-8 school.⁹

After *Hosanna Tabor*, the Sixth Circuit applied the ministerial exception to the InterVarsity Christian Fellowship/USA, “an evangelical campus mission serving students and faculty on college and university campuses nationwide.”¹⁰ It noted that IVCF’s stated purposes included establishing “witnessing communities” of Christians on campuses, that the organization’s beliefs included the “sanctity of marriage,” and that IVCF restricted employment opportunities to those who conformed in faith and practice with its own beliefs.¹¹ In finding IVCF to qualify as a “religious group” for purposes of the ministerial exception, the Sixth Circuit adopted the Fourth Circuit’s formulation: “[A] religiously affiliated entity is one whose mission is marked by clear or obvious religious characteristics.”¹²

This Court should adopt the same rule, allowing organizations with an obvious religious character to qualify for the ministerial exception despite their not being what is considered a “traditional church” or denomination. Indeed, many religious organizations, similar to IVCF, have a sincere belief that their mission is best accomplished by associating employees who are, both in belief and conduct, among those faithful to the organization’s

⁹ 565 U.S. at 177.

¹⁰ *Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829, 831 (6th Cir. 2015).

¹¹ *Id.*

¹² *Id.* at 834 (quoting *Shaliehsabou*, 363 F.3d at 310; internal quotation marks omitted).

doctrines and purposes. For instance, *amicus* Billy Graham Evangelistic Association in its employee handbook provides as follows:

As an ambassador of the Gospel of Jesus Christ and of BGEA, each employee is expected to exhibit conduct consistent with the highest degree of moral, ethical, and Biblical integrity and fidelity. . . .

. . . .

All employees must indicate and demonstrate ongoing agreement with the following expectations:

- I acknowledge that the Lord Jesus Christ is my personal Savior and that I am a personal representative of Him.

- I understand that BGEA is a Christian organization whose purpose is proclaiming the message of the Gospel of the Lord Jesus Christ throughout the world.

- I agree that the purpose of my employment with BGEA is to further its Christian purpose and that I am prepared to support its work through prayer and to assist in accomplishing BGEA's mission.

- I understand that I must exhibit conduct that is consistent with BGEA's expectations, whether at work or away from work, in keeping with Scriptural teachings and principles as set forth in God's Word, BGEA's Statement of Faith,

and BGEA's policies, including Christian Conduct.

- I understand that BGEA has the right and the responsibility to ensure that its Christian religious purpose is carried on with the highest standards and is not harmed or impeded by conduct that is inconsistent with the Bible, BGEA's Statement of Faith, its Christian religious purpose, or its policies. (App'x 1a-3a.)

Similar statements made by other *amici* in their internal governance documents are in the appendix.

The bottom line is that many religious organizations other than traditional houses of worship believe it critical to employ those personally committed to its religious purposes. This Court rightly held in *Hosanna-Tabor* that the ministerial exception covers such organizations as well.¹³ It should take this opportunity to clarify that the exception covers any organization "whose mission is marked by clear or obvious religious characteristics."¹⁴

¹³ Many religious organizations like *amici* BGEA and Samaritan's Purse are considered an "association of churches" and are classified the same as churches by the IRS under IRC §§ 509(a)(1) and 170(b)(1)(A)(i).

¹⁴ *Shaliehsabou*, 363 F.3d at 310; *accord Conlon*, 777 F.3d at 834; *see generally* James A. Davids, "Religious Colleges' Employment Rights Under the 'Ministerial Exception' and When Disciplining an Employee for Sexually Related Conduct," 21 *Tex. Rev. of Law & Politics* 423 (2017).

II. The Ministerial Exception's Application Must Be Grounded in Basic First Amendment Principles, Rather Than by Comparisons to the Teacher in *Hosanna-Tabor*.

This Court in its majority decision in *Hosanna-Tabor* properly began with first principles: the Religion Clauses themselves and the protection they offer to religious individuals and organizations. Simply stated, the Free Exercise and Establishment Clauses mutually reinforce the principle that government must not interfere with the internal affairs and practices of religious organizations.¹⁵ More particularly, as this Court noted, religious organizations have the “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”¹⁶

Applying first principles requires looking beyond the term *minister*. The Constitution does not use the term, and the concerns that activate the “ministerial exception” apply more broadly than just to the leader of a religious organization, as this Court properly recognized in *Hosanna-Tabor*.¹⁷

Religious organizations are typically operated by more than just their leaders, and those same organizations often believe it essential to their ministries to require fidelity to their own first

¹⁵ 565 U.S. at 183-87.

¹⁶ *Id.* at 186 (quoting *Kedroff v. St. Nicholas Cath. of Russ. Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

¹⁷ *See id.* at 190.

principles of faith and conduct by most, if not all, of their employees. The determination by an organization of which employees must do so is a function of the organization's ministry purpose, its size, its logistical circumstances, and, always, its understanding of its own religious beliefs and how best to fulfill its mission.

The Ninth Circuit in the cases here on appeal ignored first principles, tying the analysis instead to the particular facts in *Hosanna-Tabor*. One can divide the circumstances this Court listed for the teacher involved in *Hosanna-Tabor* into four general categories, as the Ninth Circuit did in *Biel v. St. James School*.¹⁸ Or one could itemize each of the facts mentioned about the teacher in *Hosanna-Tabor*, listing them into the teens. The Ninth Circuit's approach of toting up the numbers converts the legal calculus into how closely analogous to the *Hosanna-Tabor* teacher's circumstances the next situation happens to be.

Justice Thomas in his concurrence in *Hosanna-Tabor* presciently warned of the temptation to which the Ninth Circuit succumbed:

Our country's religious landscape includes organizations with different leadership structures and doctrines that influence their conceptions of ministerial status. The question whether an employee is a minister is itself religious in nature, and the answer will vary widely. Judicial attempts to fashion a civil definition of "minister" through a bright-line

¹⁸ 911 F.3d 603, 607-08 (9th Cir. 2018).

test or multi-factor analysis risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the “mainstream” or unpalatable to some. Moreover, uncertainty about whether its ministerial designation will be rejected, and a corresponding fear of liability, may cause a religious group to conform its beliefs and practices regarding “ministers” to the prevailing secular understanding.¹⁹

The Ninth Circuit’s method is not only impractical because, as Justice Thomas pointed out, religious organizations vary greatly in purpose, structure, mission, and doctrine; it also quickly runs afoul of basic, First Amendment principles. It would make Lutheran—Missouri Synod polity the touchstone for future cases, to the disadvantage of many other denominations and faiths. This has long been condemned as forbidden by the Religion Clauses. As this Court stated in *Larson v. Valente*,²⁰ “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”²¹

The Ninth Circuit’s method also founders as a test of the reach of First Amendment protections because, in making factual decisions as to which

¹⁹ 565 U.S. at 197 (Thomas, J., concurring) (citing *Amos*, 483 U.S. at 336)).

²⁰ 456 U.S. 228, 244 (1982).

²¹ *Accord Fowler v. R.I.*, 345 U.S. 67, 69-70 (1953); *see also Niemotko v. Md.*, 340 U.S. 268, 272-73 (1951) (holding that discrimination among religious denominations violates equal protection guarantees).

employees are central enough to a religious ministry's purposes to qualify, judges would have to decide which beliefs are important to a religious organization and which are not. This would necessarily involve courts in parsing religious doctrine and divining the intent of religiously driven decisions. Once again, this has long been understood to be foreclosed by the Religion Clauses. As this Court stated in *Fowler v. Rhode Island*, "it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment."²²

Finally, as Justice Thomas pointed out in the passage quoted above, the Ninth Circuit's approach of adding up similarities and dissimilarities to the church school teacher situation in *Hosanna-Tabor* also has the very real risk of chilling the free exercise of religion by religious groups and individuals. To try to "fit" within that framework, they will be pressured to take organizational steps or positions—ones that they otherwise would not take.²³ This, too,

²² 345 U.S. at 70; see also *Amos*, 483 U.S. at 339; *Serbian E. Orthodox Diocese for U.S.A. and Can. v. Milivojevich*, 426 U.S. 696, 708-09 (1976); *Watson v. Jones*, 80 U.S. 679, 728-29 (1871).

²³ See *Amos*, 483 U.S. at 336 ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission."); *id.* at 344 (Brennan, J., concurring) ("A case-by-case analysis for all

demonstrates that the Ninth Circuit’s approach does not comport with the First Amendment.²⁴

Finally, allowing the judiciary to determine which employees qualify as “ministers” for purposes of the exception invites inconsistencies that will be viewed as simply reflections of the personal predilections and understandings of the particular judges deciding the case. Indeed, Judge Nelson pointed out in his dissent to the denial of an *en banc* rehearing²⁵ that, while the *Biel* panel found that a Catholic elementary school teacher who teaches religion every day was not religious enough for the ministerial exception to apply, another Ninth Circuit panel a year earlier in *Kennedy v. Bremerton School District*²⁶ found the Religion Clauses were not violated when a high school coach was fired when he kneeled by himself on the field after a football game, reasoning that his job was “akin to being a teacher” and that he served as “a role model and moral exemplar” to students who would see his kneeling as a religious act.²⁷

Courts are in a precarious position when they take on the task of deciding which positions have

activities therefore would both produce excessive government entanglement with religion and create the danger of chilling religious activity.”).

²⁴ See *Bd. of Airport Comm’rs of LA v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (relaxing normal standing rules when regulation may chill First Amendment expression); *Broadrick v. Okla.*, 413 U.S. 601, 612 (1973) (same).

²⁵ 926 F.3d 1238, 1250 (9th Cir. 2019) (Nelson, J., dissenting from denial of rehearing *en banc*).

²⁶ 869 F.3d 813 (9th Cir. 2017).

²⁷ *Id.* at 825-27.

sufficient religious significance to religious organizations for purposes of the ministerial exception. It is a task foreclosed to them by the Religion Clauses.

III. Justice Thomas’s Approach to Determining the Scope of the Ministerial Exception Is the Correct One.

This question remains: What approach should the Court adopt to guide future determinations of whether a religious organization’s employee qualifies under the ministerial exception? These consolidated cases provide the opportunity to affirm that the First Amendment does not allow the government to second-guess the sincere decision of a religious organization with respect to who must carry out its mission.

The majority in *Hosanna-Tabor* declined to set out any specific test that could be used in future cases.²⁸ It found only that, on the facts of that case, the employment decision of the church school with respect to a teacher was not reviewable by the government.²⁹

Justice Alito in his concurrence at least implicitly warned that courts should not do what the Ninth Circuit did by treating the *Hosanna-Tabor* facts as the touchstone for determining which employees were covered by the ministerial exception. He did not attempt to set out a comprehensive test, though. Instead, he posited a broader definition of

²⁸ 565 U.S. at 190.

²⁹ *Id.*

those who were, at a minimum, covered by the exception: one who “leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.”³⁰

Justice Alito’s expanded definition of “minister” certainly incorporates those whom religious organizations consider as important to their ministries. But his formulation is only a listing of non-exhaustive descriptors; it does not purport to be a definition encompassing the universe of covered “ministers.”³¹ As a result, Justice Alito’s definitions do not set out a workable rule for all cases. Justice Thomas in his concurring opinion does so, and that is the test that this Court should adopt.

Justice Thomas’s formulation is simply this: The Religion Clauses require courts to defer to a religious organization’s good-faith understanding of who qualifies as its “minister.”³² Stated more generally, First Amendment protections reach any employee of a religious organization that the organization sincerely believes must adhere to its faith and conduct principles for it to best accomplish its ministries.³³

³⁰ *Id.* at 199 (Alito, J., concurring).

³¹ *Id.*

³² *Id.* at 196 (Thomas, J., concurring).

³³ *Cf. NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 501-04 (1979) (finding Congress did not intend to give NLRB jurisdiction over church-related schools in part because it would raise First Amendment issues).

The error and inconsistency in treating either the *Hosanna-Tabor* majority’s particularized description of the teacher’s characteristics or Justice Alito’s more generic, “functional” definition as the controlling test is shown in the case law interpreting the exception in the wake of *Hosanna-Tabor*—even among those decisions that, unlike the Ninth Circuit, found the exception applicable. For instance, in *Grussgott v. Milwaukee Jewish Day School, Inc.*,³⁴ the Seventh Circuit, while recognizing that this Court “declined” in *Hosanna-Tabor* “to delineate a clear test for determining who is a ministerial employee,”³⁵ proceeded to match up the teacher in that case with the one in *Hosanna-Tabor*, finding two parts of the analysis did not weigh in her favor, i.e., her title of “grade school teacher” and how she “presented herself to the public.”³⁶ The court found these more than counterbalanced when it analyzed the “substance” of her responsibilities and whether they were sufficiently “religious” in function, wading into the question of whether her instruction was merely “secular” or “cultural,” rather than “religious.”³⁷

To its credit, the Seventh Circuit, when finding in favor of the school, stated what should be the controlling rules. It first noted that it is inappropriate for courts to draw “a distinction between secular and religious teaching . . . when

³⁴ 882 F.3d 655 (7th Cir. 2018).

³⁵ *Id.* at 657.

³⁶ *Id.* at 659.

³⁷ *Id.* at 659-60; see also *Meek v. Pittenger*, 421 U.S. 349, 370 (1975) (noting difficulty of separating the religious from the secular in a church school setting).

doing so involves the government challenging a religious institution's honest assertion that a particular practice is a tenet of its faith. . . . And not only is this type of religious line-drawing incredibly difficult, it impermissibly entangles the government with religion.”³⁸ What the Seventh Circuit failed to note is that, if it had applied these principles, its prior factual analysis of whether the teacher was or was not involved in sufficiently “religious” instruction in the court’s eyes should have been avoided. Instead, as the Seventh Circuit concluded in tracking the substance of what Justice Thomas proposed as the governing rule in *Hosanna-Tabor*, “This does not mean that we can never question a religious organization’s designation of what constitutes religious activity, but we defer to the organization in situations like this one, where there is no sign of subterfuge.”³⁹

The Second Circuit in *Fratello v. Archdiocese of New York*⁴⁰ also applied the four-category fact analysis it distilled from the majority decision in *Hosanna-Tabor* in deciding that a principal of a Catholic school qualified for the ministerial exception. In doing so, the Second Circuit recognized that “courts are ill-equipped to assess whether, and to what extent, an employment dispute between a

³⁸ 882 F.3d at 660 (citing *Amos*, 483 U.S. at 343 (Brennan, J., concurring); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 306 (1963) (Goldberg, J., concurring)).

³⁹ *Id.*; see also *Hosanna-Tabor*, 565 U.S. at 196 (Thomas, J., concurring); *id.* at 199 (Alito, J., concurring) (exception applies if “religious group believes” employee performs key functions described).

⁴⁰ 863 F.3d 190 (2d Cir. 2017).

minister and his or her religious group is premised on religious grounds.”⁴¹ Noting that the majority decision in *Hosanna-Tabor* explicitly disclaimed setting out a “rigid formula,” the Second Circuit found Justice Alito’s concurrence “both persuasive and extremely helpful” and applied a more “functional” test.⁴²

Nevertheless, the court walked through the four categories this Court’s majority focused on for the school teacher in *Hosanna-Tabor*, weighing the significance of the principal’s title, assessing whether her functions and job qualifications were sufficiently “religious,” and analyzing her use of her title in public settings.⁴³ While the Second Circuit concluded that “she held herself out as a spiritual leader” and that she “performed many important religious functions to advance [the school’s] Roman Catholic mission,” thus finding her to fall under the ministerial exception, this type of analysis itself violates the basic principle that courts are incompetent to judge the religious mission of an organization and which employees must adhere to the organization’s tenets of faith and practice in order for the organization to fulfill that mission as it sees best. As the Second Circuit observed earlier in its decision,

Judges are not well positioned to determine whether ministerial employment decisions rest on practical and secular considerations or fundamentally different ones that may lead to

⁴¹ *Id.* at 203.

⁴² *Id.* at 204-05.

⁴³ *Id.* at 207-09.

results that, though perhaps difficult for a person not intimately familiar with the religion to understand, are perfectly sensible—and perhaps even necessary—in the eyes of the faithful. In the Abrahamic religious traditions, for instance, a stammering Moses was chosen to lead the people, and a scrawny David to slay a giant.⁴⁴

In *Cannata v. Catholic Diocese of Austin*,⁴⁵ the Fifth Circuit dealt with perhaps the “hardest” case for the religious organization of those decided under *Hosanna-Tabor*, hardest because the employee arguably matched up in only one of the four fact categories the *Hosanna-Tabor* majority relied upon. The church fired its music director, and he claimed to have no religious duties, as he only played the piano and ran the sound system at mass and performed a few, internal, administrative responsibilities for the music program. The Fifth Circuit, relying on the sworn statement of the priest that music was an integral and important part of the mass, ruled that the ministerial exception applied. It disallowed the employee’s contrary statement that his duties were not religious because that contention was a challenge to church doctrine, a challenge that “government is foreclosed from deciding by the Religion Clauses”: “we may not second-guess whom the Catholic Church may consider a lay liturgical minister under canon law.”⁴⁶ In so ruling, the Fifth Circuit relied on both

⁴⁴ *Id.* at 203.

⁴⁵ 700 F.3d 169 (5th Cir. 2012).

⁴⁶ *Id.* at 177-80; see also *Sterlinski v. Cath. Bishop of Chi.*, 934 F.3d 568 (7th Cir. 2019) (finding church organist covered by exception).

Justice Thomas's and Justice Alito's concurrences, concluding that the church had established the "importance" of music to the mass and that the employee had performed an "important" function during the service.⁴⁷

But one must ask what the result would have been if the Fifth Circuit had considered the duties of the music director not to be "important" to the ministry, but only "tangential" or "peripheral." Although Justice Alito included among those who obviously qualified as a "minister" for purposes of the exception personnel who are "essential" or "important" to "key" and "important" religious activities,⁴⁸ he at the same time declined to second-guess the "importance" to the school of the teacher's firing because of its stated reason that she had violated the church doctrine of internal dispute resolution. In doing so, he reasoned as follows:

The credibility of Hosanna-Tabor's asserted reason for terminating respondent's employment could not be assessed without taking into account both the importance that the Lutheran Church attaches to the doctrine of internal dispute resolution and the degree to which that tenet compromised respondent's religious function. If it could be shown that this belief is an obscure and minor part of Lutheran doctrine, it would be much more plausible for respondent to argue that this doctrine was not the real reason for her firing. If, on the other hand, the doctrine is a central and universally

⁴⁷ 700 F.3d at 180.

⁴⁸ 565 U.S. at 199, 204 (Alito, J., concurring).

known tenet of Lutheranism, then the church’s asserted reason for her discharge would seem much more likely to be nonpretextual. But whatever the truth of the matter might be, the mere adjudication of such questions would pose grave problems for religious autonomy: It would require calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church’s overall mission.

....

What matters in the present case is that Hosanna-Tabor believes that the religious function that respondent performed made it essential that she abide by the doctrine of internal dispute resolution; and the civil courts are in no position to second-guess that assessment.⁴⁹

This states the law properly, and it harmonizes Justice Alito’s views with those articulated by Justice Thomas. The Religion Clauses require courts to give full credit to a religious organization’s good-faith judgment as to which employees are its ministers. Justice Brennan stated it cogently in *Amos*: “we deem it vital that, if certain activities constitute part of a religious community’s practice, then a religious

⁴⁹ *Id.* at 205-06 (Alito, J., concurring); see also *Sterlinski*, 934 F.3d at 570; cf. *Amos*, 483 U.S. at 339 (noting that requiring a court to determine what duties are “secular” and what are “religious” would be an “intrusive inquiry into religious belief” of a religious group).

organization should be able to require that only members of its community perform those activities.”⁵⁰

IV. Several *Amici* Demonstrate the Importance That This Court Adopt Justice Thomas’s Test for the Exception.

Justice Thomas’s formulation is critically important for several of your *amici*, for the simple reason that they do not fit easily into normal religious classifications or, in the case of the church school, do not track the organizational structure of the Lutheran-Missouri Synod church school in *Hosanna-Tabor*. *Amicus* Billy Graham Evangelistic Association focuses principally on one aspect of the mission of the Christian Church, evangelization. BGEA believes that the work of evangelism is primarily a spiritual endeavor that requires unity of purpose and belief. BGEA conducts regular devotional activities and provides other resources and opportunities intended to enhance each employee’s relationship with Jesus Christ and, consequently, their personal spiritual preparedness to serve effectively in the organization. But it does not, like a local church, conduct normal worship services in a church building. BGEA also provides religious instruction through a variety of means and media. But it does not, like a Christian school, teach or catechize in a typical classroom setting. It is an ecumenical ministry supported by thousands of individuals and churches. In its employ are those who fit comfortably into most definitions of *minister*, such as its evangelists who preach at its evangelistic

⁵⁰ 483 U.S. at 342-43 (Brennan, J., concurring).

crusades. But there are other employees who work with local churches to organize its evangelistic events and follow up with those who respond to its invitation to believe in Jesus Christ. And other employees run associated evangelistic ministries, such as the Billy Graham Library in Charlotte; digital, radio and television broadcasts; telephone ministry and internet evangelism; and BGEA's Rapid Response Team that dispatches crisis-trained chaplains to assist persons beset by natural and man-made disasters when and where they strike. All of these employees—and yet others whose positions BGEA's leadership determined would somehow support and extend its evangelistic efforts—are instrumental to its religious mission. As a result, BGEA requires each of them to share the ministry goals and to adhere to the standards of conduct and belief in its employee handbook as reproduced above and in the appendix. (App'x 1a-3a.)

Amicus Samaritan's Purse as its principal mission focuses on another aspect of the calling of the Christian Church—reaching out to those in need of material assistance, while at the same time presenting the answer to each person's spiritual needs with the good news of Jesus Christ. This ministry is not subservient to that of evangelization, but complementary to it; it is also a ministry to which Christians are called. All Samaritan's Purse employees are actively involved in its daily devotions and prayer ministry, and they directly further the mission of the organization by interacting with donors, the community at large, and those they assist. They are literally the hands of Christ as they meet the needs of others and, as a result, Samaritan's Purse requires all its employees to

commit to its Statement of Faith and Code of Christian Conduct. Otherwise, its important, spiritually-driven mission would be undermined.

Amicus Forcey Christian School has many of the same goals as the school in *Hosanna-Tabor*, but its supporting church is non-denominational and does not have the liturgical formality of Lutheran—Missouri Synod churches. For instance, the school's teachers, while engaged in leading devotionals with their children, are not “ordained” or required to be members of the sponsoring church. However, all its teachers and administrators are required to affirm a statement of faith and conduct, and the church and school sincerely believe that, to carry out the mission of the school fully, such affirmation is essential. (App'x 4a-12a.)

Amicus Congressional Prayer Caucus Foundation has the explicit religious purpose of preserving and promoting the use of prayer and other religious expression in the public square. To fulfill that mission, it requires its employees to pray daily as a group and to affirm a Christian statement of faith. (App'x 13a-21a.)

Amicus ICECE is a ministry assisting our country's armed forces and serving explicitly religious purposes, including the placement of chaplains who are not sponsored by established denominations. In performing these religious services, ICECE member chaplains must rely on volunteer religious leaders and workers who provide teaching and other ministries, such as music and counseling, but who often are not ordained or from the chaplain's own faith group. An ICECE chaplain

has a duty in representing his sending church to make sure the beliefs and practices of volunteers or leaders who provide supporting services are in harmony with church doctrine and practice, as exhibiting a consistent religious message is critical to effective ministry.

To suggest that courts are competent to determine whether particular personnel of non-traditional ministry organizations like these *amici* are “essential” or “important” by analogizing to the teacher in *Hosanna-Tabor*, or by any other artificial yardstick, conflicts with basic First Amendment principles. Courts have no more competence to judge the sincerity of a religious organization’s decision in such matters than they have to judge religious beliefs of an individual.⁵¹

Religious organizations draw the line for which employees must adhere to the organization’s faith and practice to meet its mission at different places, but it is always a line informed by the organization’s own religious beliefs. It is critical to these groups that the government, through its anti-discrimination laws, not be allowed to restrict the free exercise of their religion when they make those decisions about their ministries.

CONCLUSION

The Ninth Circuit’s decisions should be reversed. Before further encroachments are made on the First Amendment freedoms of religious organizations, this Court should provide additional

⁵¹ See *Thomas v. Review Bd.*, 450 U.S. 707, 712-15 (1981).

guidance to the lower courts in this critically important area by adopting Justice Thomas's rule as stated in his concurrence in *Hosanna-Tabor*.

Respectfully submitted
this 10th day of February 2020,

/s/ Frederick W. Claybrook, Jr

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APPENDIX

Excerpts from Billy Graham Evangelistic Association Employee Handbook

I. BGEA and Your Ministry Employment

.....

b. Mission Statement (01.02)

Continuing the lifelong work of Billy Graham, the Billy Graham Evangelistic Association exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all we can by every effective means available to us and by equipping the church and others to do the same.

c. Distinct Objectives

- Represent Jesus Christ—Serve as ambassadors for Christ in the public square.
- Cultivate prayer—Engage the church in prayer to empower evangelism and discipleship.
- Proclaim the Gospel—Spread the Gospel of the Lord Jesus Christ to all we can by every effective means available to us.
- Disciple New Believers—Engage new believers and transition them to local, Bible-teaching churches.
- Equip the Church for Evangelism—Provide training and tools to equip the church in evangelism.
- Demonstrate Love in Action—Support the church in meeting practical human needs.

....

e. Christian Conduct (08.01)

As an ambassador of the Gospel of Jesus Christ and of BGEA, each employee is expected to exhibit conduct consistent with the highest degree of moral, ethical, and Biblical integrity and fidelity. BGEA's standards for evaluating Christian conduct include its Statement of Faith, Mission Statement, Hallmarks, and various policies, as well as other written or verbal guidance that may be provided from time to time. BGEA has the right and discretion to consider all of an employee's conduct, whether at work or away from work, in order to determine consistency with its expectations for those members of the body of Christ serving in this ministry.

....

h. Expectations for Ministry Employment

All employees must indicate and demonstrate ongoing agreement with the following expectations:

- I acknowledge that the Lord Jesus Christ is my personal Savior and that I am a personal representative of Him.
- I understand that BGEA is a Christian organization whose purpose is proclaiming the message of the Gospel of the Lord Jesus Christ throughout the world.
- I agree that the purpose of my employment with BGEA is to further its Christian purpose and that I am prepared to support its work through prayer and to assist in accomplishing BGEA's mission.

- I understand that I must exhibit conduct that is consistent with BGEA's expectations, whether at work or away from work, in keeping with Scriptural teachings and principles as set forth in God's Word, BGEA's Statement of Faith, and BGEA's policies, including Christian Conduct.
- I understand that BGEA has the right and the responsibility to ensure that its Christian religious purpose is carried on with the highest standards and is not harmed or impeded by conduct that is inconsistent with the Bible, BGEA's Statement of Faith, its Christian religious purpose, or its policies.
- I understand that any of my conduct that is not in keeping with Scriptural teachings and principles as set forth in God's Word, BGEA's Statement of Faith, and BGEA's policies is inconsistent with BGEA's Christian religious purpose.
- I understand that if my conduct is determined by BGEA to be inconsistent with its Christian religious purpose, the result will be corrective action up to and including termination from employment.

**Excerpts from Forcey Christian School
Faculty Handbook 2019-2020**

HISTORY OF FORCEY CHRISTIAN SCHOOL

.....

Forcey Christian School operates under the auspices of the Forcey Education Association, a non-profit corporation affiliated with Forcey Bible Church. . . .

Please uphold Forcey Christian School, its staff and students, in your daily prayers.

**MISSION AND VISION OF FORCEY
CHRISTIAN SCHOOL**

The FCS Vision: FCS seeks to educate students to reach their full potential spiritually, academically, cognitively, physically, socially and emotionally; who pursue an enduring intimacy with Jesus Christ, and engage believers and non-believers in their lifelong journey for His glory.

The FCS Mission: The mission of Forcey Christian School is to provide sound, excellent, biblically-based education to the children of our church and community in a Christ-centered school environment where they learn under born-again, professional teachers in rigorous academic programs that will develop them into highly capable students, imbued with the disciplines of Christian life and Christ-like character for the benefit of society. (Rom. 12:1-2, Matt 28: 18-20, Eph. 4: 1-16)

.....

Philosophy and Purpose:

The school functions as a ministry of FBC to the community. The school is founded on the belief that God has purposefully provided the foundation for Christian education by creating all things and providing us with His written word through His Son and the Holy Spirit. In our view, Christian education is a response to God's desire to teach and train students to know, love and obey the Triune God and to relate all knowledge, skill, and life practice to Him. Forcey Christian School holds the conviction that God's plan appoints parents to be responsible for the education and development of their children (Ephesians 6:1-4 and Deuteronomy 6:4-9). The general purpose of FCS is to assist parents with this responsibility, and to lead and support students in discovering and developing their unique God-given abilities. FCS teaches truth from a Biblical worldview in an atmosphere of Christian love and discipline, striving to develop in the student's life a proficiency in academic skills, godly character traits, and a life of service towards the Savior. Leading students to become more fully devoted followers of Christ is the school's highest priority. Through our daily program, the students are made aware of God the Creator and of His special love for each one of them. Bible studies that reveal God's care, protection, and leadership will be presented to ensure a firm foundation of trust in our caring, loving, and holy God. The Bible is presented in all classes as the source book for life, and Jesus Christ is introduced as the Son of God, the Savior. Forcey Christian School welcomes students without regard to race, sex, or nationality. As part of Forcey Bible

Church, the school operates independently of state regulation and control, but will adhere to state and county health and safety standards. FCS is committed to providing an educational environment that encourages learning under the tutelage of professional, committed Christian teachers.

....

CORE VALUES

- We recognize that parents bear the primary responsibility for their child's education, and we are committed to working with them and their church to disciple each student.
- We make a commitment to maintain academic excellence and to maximize every student's potential.
- We are committed to hiring staff members who are passionate, devoted followers of Christ who love students.
- Students will learn how to process information and to think critically in the context of a biblical worldview.
- All students matter to God and have a right to learn in a safe and secure environment.
- We will ensure that discipline will be purposeful, directed toward the goal of self-discipline.
- Students are taught to love God with all their heart, soul, mind, and strength and to love their neighbor as themselves.
- We are committed to creating an environment where the pursuit of full devotion to Christ is expected and includes developing the habits of personal responsibility and servanthood.

.....

APPENDIX 1: TEACHERS' CODE OF ETHICS

Overview

Forcey Christian School teachers, believing that each child is an image-bearer of God, recognize the importance of helping students to grow academically, physically, socially and spiritually. FCS teachers accept the responsibility of adhering to the highest ethical standards, acknowledging that God has called them to the profession and has placed them in the classroom not only to teach, but to model Christ in their speech, conduct and relationships within the school community.

I. The Teacher's Commitment to Students

“Instruct them to do good, to be rich in good works, to be generous and ready to share, storing up for themselves a good foundation for the future, so that they can take hold of that which is life indeed.”

(I Timothy 6:18)

The Forcey Christian School Teacher:

1. Treats each child with respect, recognizing that each possesses unique, God-given talents and ability levels.
2. Demonstrates the fruit of the Spirit: love, joy, peace, patience, kindness, goodness, faithfulness, gentleness and self-control.
3. Uses authority wisely and lovingly.
4. Exercises discipline justly and fairly.
5. Does not reveal confidential information concerning students unless disclosure serves an appropriate professional purpose.

6. Does not discriminate against any student on the basis of race, color, sex, national or ethnic origin and protects students from discrimination.

II. The Teacher's Commitment to Colleagues

"Let all be harmonious, sympathetic, brotherly, kindhearted and humble in spirit." (I Peter 3:8)

The Forcey Christian School Teacher:

1. Demonstrates honesty, love, respect, support and encouragement toward colleagues, publicly and privately.
2. Builds a collegial team through prayer and cooperation.
3. Resolves differences with honesty and dignity and in a loving manner.
4. Is respectful towards the administration and the board and supports the expressed mission and vision of the school.

III. The Teacher's Commitment to Parents

"Children, obey your parents in the Lord, for this is right." (Ephesians 6:1)

The Forcey Christian School Teacher:

1. Makes every effort to establish a partnering relationship with parents of students, realizing they share the common goal of a quality, Christ-centered education.
2. Keeps parents informed of their student's academic, social and spiritual development.

3. Is respectful and understanding of the traditions of diverse cultures represented in the classroom.
4. Keeps confidential all information pertinent to the student and family.

IV. The Teacher's Commitment to Professionalism

“Whatever you do, do your work heartily, as for the Lord.” (Colossians 3:23)

The Forcey Christian School Teacher:

1. Seeks opportunities to grow professionally.
2. Adheres to contractual conditions and strives to perform all duties and responsibilities with excellence.
3. Admirably represents the teaching profession and the school throughout the community with a life of integrity, honoring God.

APPENDIX 2: FCS LIFESTYLE STATEMENT

Forcey Christian School is a religious, nonprofit organization representing Jesus Christ throughout the local community. FCS requires its employees to be born-again Christians, living their lives as Christian role models (Rom. 10:9–10, 1 Tim. 4:12, Luke 6:40) and conducting themselves in a way that will not raise questions regarding their Christian testimonies.

A lifestyle based on Biblical standards of moral conduct should demonstrate integrity, appropriate personal and family relationships, professional conduct, and moral behavior. An employee is

expected to display a teachable spirit, an ability to share love for others, a willingness to live contentedly under authority, and a commitment to follow the Matthew 18 principle when an issue arises with fellow employees or the administration.

Moral misconduct, which violates the bona fide occupational qualification for employees to be Christian role models, includes, but is not limited to, promiscuity, homosexual behavior or any other violation of the unique roles of male and female. (Rom. 1:21-27; I Cor. 6:9-20). Forcey Christian School believes that biblical marriage is limited to a covenant relationship between a man and a woman.

FCS employees who fail to maintain a lifestyle based on biblical standards of conduct may be subject to a reprimand or, in some cases, dismissal from employment. It is the goal of FCS that each employee will have a lifestyle where "...He might have the pre-eminence." Col. 1:18.

I declare that I am in agreement with the above statements. My signature below indicates that I meet the moral integrity standards and Christian role model lifestyle requirements of FCS.

Applicant's signature:

Date:_____

Supervisor's signature after discussion:

**APPENDIX 3: DECLARATION
OF MORAL INTEGRITY FORM**

Our school expects all of its employees, as well as its volunteers who have unsupervised access to children, to model the same Christian values and lifestyle that it seeks to inculcate in its students. As an applicant for a ministry position as an employee or as a volunteer at this school, I, (print name)

_____,
recognize, understand, and agree to live by the Christian moral standards of the school.

I declare that as a follower of Christ, I am not engaging in and commit to not engage in inappropriate sexual conduct. Inappropriate conduct includes, but is not limited to, such behaviors as the following: heterosexual activity outside of marriage (e.g., premarital sex, cohabitation, extramarital sex), homosexual activity, sexual harassment, use of (including the viewing of) pornographic material or websites, and sexual abuse or improprieties toward minors as defined by Scripture and federal or state law.

I declare that the above statement is factual and true. My signature below indicates that I meet the moral integrity standards and Christian role model lifestyle requirements of Forcey Christian School.

Applicant's signature

Date

Administrator's signature after discussion with
applicant/volunteer

_____ Date

“Honor marriage, and guard the sacredness of sexual
intimacy between wife and husband. God draws a
firm line against casual and illicit sex.” (Hebrews
13:4, *The Message*)

“A pupil is not superior to his teacher, but everyone
[when he is] completely trained (readjusted, restored,
set to rights, and perfected) will be like his teacher.”
(Luke 6:40, AMP)

Excerpts from Congressional Prayer Caucus Foundation, Inc., Employee Commitment

Our Vision

Protect religious freedom, preserve America's Judeo-Christian heritage and promote prayer.

....

Prayer with Employees

A private prayer time has been set for Staff, and all Staff are required to join in prayer every day at the designated time.

....

Calling

Our calling includes both introduction to and encouragement to remain in a life of full devotion to Jesus Christ (Colossians 3:17). We are charged with encouraging, equipping, serving and sustaining Christians. We do this by displaying our Christian philosophies, values, missions and goals in ministerial, members, employees and volunteers and those whom our Foundation serves. Overt religious purpose, as well as related religious purpose all serve as methods that the Congressional Prayer Caucus Foundation utilizes to instill our religious values and beliefs, both expressly and by example. Guided by Holy Scripture and the Holy Spirit, the Congressional Prayer Caucus Foundation's

Governing Documents, Doctrines, Mission Statement, Statements of Faith, Job Responsibility, Positional Statements, Handbooks, Agreements and Contracts and Website or Social Media Content reflect our calling and all ministerial, members, employees and volunteers are therefore subject to them including discipline, mediation and termination policies.

Community

The Congressional Prayer Caucus Foundation is dedicated to serving and providing for its community. We exist to foster a Christ-like environment of persons subscribing to our religious beliefs and faith. We believe that our success is derived from participating in a larger religious community. For this reason, individual members of our body play a large role in furthering our mission and viewpoint as a Foundation.

Associating with like-minded Christians reinforces the Congressional Prayer Caucus Foundation's Christian purpose and is vital to the perpetuation of our faith (2 Corinthians 6:14, 2 John 1:9-11, 1 Corinthians 15:33). We are committed to being and making disciples who understand what it means to follow Jesus Christ into a life of worship, fellowship, sacrifice, service and being led by the Holy Spirit (Matthew 28:19, Acts 1:8, John 15:16, Mark 16:15). Our mission as the body of Christ is to participate, share and encourage each other toward spiritual growth (I Thessalonians 5:11, Hebrews 10:23-25, Colossians 3:16).

Involvement in our Foundation requires a tangible commitment to our beliefs and mission as outlined in the Congressional Prayer Caucus Foundation's Written Statements of Faith – and are therefore subject to all of its discipline, mediation and termination policies, which are incorporated herein by reference, as if fully set forth herein.

Expression of Faith

The Congressional Prayer Caucus Foundation intends to transmit our system of religious beliefs, tradition, Christian morals, reverence and values. We do so by engaging in the community and individuals' lives and through all activities in which we participate. Likewise, we believe that all behavior of members and representatives of the Foundation is communicative in nature, exemplifying and expressing our faith, both publically and privately (1 Peter 2:12). Any member or representative who propounds a point of view contrary to our beliefs as stated in our Written Statements of Faith, which are incorporated herein by reference as if fully set forth herein, will impair the Congressional Prayer Caucus Foundation's integrity and ability to disseminate its religious views and message (James 4:4, 1 Corinthians 5:11-12) and therefore, are subject to discipline, mediation and termination policies, which are incorporated herein.

Outreach

We take very seriously the Biblical charge to be a Christian presence in a secular world (Matthew 5:14-16). Therefore, all activities that the Congressional Prayer Caucus Foundation engages in are intended

to further its religious purpose, as stated in our Mission Statement. As such, all of our activities are considered an outgrowth of the Congressional Prayer Caucus Foundation's mission to protect religious freedom, preserve America's Judeo-Christian heritage and promote prayer.

.....

Discipline, Mediation and Termination Policy

The Congressional Prayer Caucus Foundation is an organization representing the Christian church and as such strives to present our doctrine in its fullness. We further affirm that we hold, believe and practice all that the Christian church teaches, believes and proclaims to be true, as set forth in our Written Statements of Faith, whether from the natural moral law or revelation from God through Holy Scripture and traditional teachings of the Christian church.

The Congressional Prayer Caucus Foundation acknowledges that all ministerial, members, employees and volunteers who engage in this Foundation have a higher calling, according to which they must not only avoid public contradiction of their status as professional agents in the mission of the Foundation, but are also called to conform their hearts, minds and consciences, as well as their public and private behavior, ever more closely to the truths taught by Holy Scripture and through the Foundation. Recognizing as we do that no person can give perfect witness to these truths, the Congressional Prayer Caucus Foundation professionals are nevertheless called to strive for assent and fidelity.

Failure to perform in accordance with the terms and conditions of this contract as stated herein and in the Written Statements of Faith are subject to discipline, mediation and/or termination. Any activity or the support of activities which espouse beliefs contrary to the Congressional Prayer Caucus Foundation's teaching and Statements of Faith are sufficient cause for termination. Further, refusal to foster, repeat, advertise or disseminate views, messages or statements in accordance with the Congressional Prayer Caucus Foundation's own can lead to termination.

.....

Final Authority

The Executive Director, President and Board of Directors is the final authority on (1) scripture, faith, morals and discipline; (2) formal employment or membership requirements vis-à-vis eligibility, morals, discipline, removal and rescission; (3) Statements of Faith and Policy; (4) Standards of Morals and Conduct; (5) internal dispute resolution; and, (6) enforcement of conformity of belief and practice relating to religious teaching and practice. Any ministerial, member, employee or volunteer may seek to clarify the Congressional Prayer Caucus Foundation's Positional Statements, Statements of Faith and any other policy or belief in question. Individuals should set an appointment with a member of the final authority on such issues to clarify his/her understanding.

Mediation

Ministerials, members, employees or volunteers submit to the designated final authority of the Congressional Prayer Caucus Foundation to resolve any disputes relating to policies and practices. Any ministerial, member, employee or volunteer may seek to move to mediation with a final authority and optional external third party to discuss the Congressional Prayer Caucus Foundation's Positional Statements, Statements of Faith and any other policy or belief in dispute. Individuals should set an appointment with a member of the final authority to proceed to mediation.

Automatic Termination Clause

All ministerial, member, employee or volunteer must recognize the religious nature of the Congressional Prayer Caucus Foundation and agree that the Foundation has the right to dismiss one for public immorality, scandal or rejection of the official teachings, doctrine or policies, thereby terminating any and all rights that one may have hereunder resulting in automatically forfeiture of all privileges for any conduct or avocation of conduct that stands in contradiction to the Foundation's stated beliefs, policies and mission as set forth herein. Such contrary beliefs or practices would make me unfit to advance the Foundation's mission as it would impede and burden the integrity and religious mission of the Foundation.

....

Employee Commitment

The following is a declaration of statements we believe each employee affiliated with the Congressional Prayer Caucus Foundation can agree with and commit to uphold in keeping with the spirit and mission of the Congressional Prayer Caucus Foundation

I believe

- That Jesus Christ is the Son of God; was crucified, died and was resurrected; is the Way the Truth and the Life; and to see the kingdom of God a person must be born again and choose to follow Jesus Christ as Lord and Savior.
- That the Bible is the inspired Word of God.
- That the Holy Spirit indwells every believer and His power and gifts are active today.

Excerpts from International Conference Of Evangelical Chaplain Endorsers Bylaws

II. Purposes and Responsibilities

ICECE's purposes and responsibilities are:

- a. To serve as a liaison between affiliated Endorsers and the Armed Forces, Veterans Administration, Bureau of Prisons, Emergency Services and other agencies that require chaplaincy services under the Free Exercise Clause of the U.S. Constitution or to maintain professional standards and necessary spiritual support, and to manifest to them and the nation that there are common areas of spiritual and moral convictions and concerns to which those within the Conference affirm united commitment.

.....

III. Membership

- a. Members shall hold as matters of faith and conviction the seven faith statements listed below, the rejection of which in word or practice shall constitute a voluntary withdrawal from ICECE.
 - i. The Bible is the inerrant, infallible Word of God and the absolute standard for moral conduct, faith and practice;
 - ii. The doctrine of the Trinity as defined by the Athanasian Creed;

- iii. That Jesus Christ is Lord, the only begotten Son of God born of the virgin Mary;
- iv. Salvation through repentance and faith in the redeeming sacrifice of Christ on the cross;
- v. The physical resurrection and ascension of Jesus Christ, and His Second Coming;
- vi. The New Testament standard for those who rule the church and teach doctrine, permits only ordained men to serve as Chaplains; and,
- vii. Marriage is the legal and blessed union of one man, who is born a male, and one woman, who is born a female.

.....