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<td>Victoria Crisitello,

Plaintiff-Respondent,

v.

St. Theresa School,

Defendant-Petitioner.</td>
<td>SUPREME COURT OF NEW JERSEY
Docket No. 085213

ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
Docket No. A-4713-18T3

Civil Action

SAT BELOW:
Hon. Garry S. Rothstadt, J.A.D.
Hon. Jessica R. Mayer, J.A.D.
Hon. Ronald Susswein, J.A.D.</td>
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BRIEF AND APPENDIX OF AMICI CURIAE NATIONAL WOMEN'S LAW CENTER, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, AND 26 ADDITIONAL ORGANIZATIONS IN SUPPORT OF PLAINTIFF-RESPONDENT VICTORIA CRISITELLO

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The National Association of Social Workers

The National Association of Women Lawyers

The National Coalition Against Domestic Violence

The National Council of Jewish Women

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The Reproductive Health Access Project

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PRELIMINARY STATEMENT

Amici Curiae submit this brief in support of Plaintiff-Respondent, Victoria Crisitello ("Plaintiff" or "Ms. Crisitello"), an art teacher who was terminated by her employer, St. Theresa School, a Catholic elementary school within the Archdiocese of Newark ("Defendant" or "the School"), because she became pregnant while not married. Ms. Crisitello was a teacher's aide in the School's "toddler room" before she became an art teacher, and she worked at the School for approximately three years before she was fired. The School seeks to deny Ms. Crisitello her workplace civil rights protections (here, based on pregnancy and marital status) under the New Jersey Law Against Discrimination (the "LAD"), N.J.S.A. 10:5-1 et seq., by arguing that the First Amendment's "ministerial exception" applies to her position.[1]

As explained more fully below, applying the ministerial exception here would be a stark departure from this Court's and the United States Supreme Court's precedents, would extend the doctrine beyond recognition, and would render actual employment duties irrelevant to the ministerial exception analysis. At the time in

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[1] The School also argues that the LAD's religious exemption, N.J.S.A. 10:5-12, precludes Ms. Crisitello's claim. This brief focuses on the ministerial exception under the First Amendment. Amici refer the Court to the submissions of other amicus curiae in this case that are focused on the interpretation and applicability of the LAD. Amici note, however, that the statutory exemption should be constrained by, and coterminous with, the constitutional limits established by the ministerial exception discussed herein, otherwise the statutory exemption would violate the Federal and State Constitutions. See Woods v. Seattle's Union Gospel Mission, 481 P.3d 1060 (Wash. 2021).

question, Ms. Crisitello was an art teacher and did not perform any "vital religious duties" that could allow her to be considered a ministerial employee: she did not teach religion or religious texts; she did not counsel her students in religious doctrine or faith; she did not lead her students in prayer or pray with them; and she did not deliver sermons or select liturgy. See Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2066 (2020). Indeed, the School has not identified any job duties or actions by Ms. Crisitello that would extend the limited ministerial exception to her position. Instead, in an attempt to expand the reach of this exception, the School relies solely on general statements in its policies and Faculty Handbook that purport to describe how the School views the role of all its teachers to "assist schoolchildren develop spiritually and morally." Db4.[2]

A decision that permits employers to unilaterally determine when the ministerial exception applies without consideration of an employee's actual duties, and thus allows the employers to evade basic workplace protections under state and federal law, would produce far-reaching and extraordinarily harmful effects. The Court need only consider the facts here to see the breadth of the School's position and the impact it would have on the State's workforce. The School's employment policies and handbook apply to all the School's teachers and presumably all teachers at the seventy-six Catholic Schools within the Archdiocese of Newark. The

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[2] "Db" refers to Defendant's opening brief filed in support of its Petition for Certification.

School could thus attempt to cloak all its personnel——i.e., the janitor, school nurse, bus driver, receptionist, or a teacher's aide——within the ministerial exception by similarly describing them in their employment handbook as an "integral 'Christian Witness' who inculcates religious truth and values . . . [by expressing] a value-centered approach to living and learning in their private and professional lives." Db5.

If permitted by this Court, the School's theory would provide a roadmap for the more than 600 New Jersey schools that have a religious affiliation, as well as countless other non-school religious institutions, to try to insulate themselves from compliance with workplace civil rights laws. This is not hyperbole. See infra Argument Section II. Inappropriately expanding the ministerial exception thus threatens the civil rights of tens of thousands of employees in New Jersey and could leave them wholly unprotected from, for example, workplace sexual harassment; unequal pay based on disability; or losing their job based on race, gender, or sexual orientation. This unwarranted expansion would exact a costly toll on the most vulnerable employees: women; people of color; older workers; workers with disabilities; lesbian, gay, bisexual, transgender, and queer workers; immigrant workers; and individuals who face multiple and intersecting forms of discrimination in the workplace.

For all these reasons, we urge the Court to reject the broad and essentially limitless expansion of the ministerial exception as proffered by the School and to affirm the decision below.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are organizations committed to civil rights, including women's rights, that seek to ensure the effective enforcement of our nation's nondiscrimination laws, consistent with the rights of religious employers under the First Amendment. Amici file this brief in support of Ms. Crisitello to highlight the myriad ways that workers who should be protected from discrimination, including harassment, and retaliation, would be harmed if the Court expanded the ministerial exception in the manner proposed by the School.

The **National Women's Law Center** is a nonprofit legal advocacy organization founded in 1972 and is dedicated to the advancement and protection of the legal rights and opportunities of women and girls, and all who suffer from sex discrimination. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with particular focus on the needs of low-income women and those who face multiple and intersecting forms of discrimination.

Americans United for Separation of Church and State is a national, nonpartisan organization that for seventy-five years has brought together people of all faiths and the nonreligious who believe that religious freedom should be used as a shield to protect but never a sword to harm others. To that end, Americans United works across the country——as counsel and as an amicus curiae——to ensure that the constitutional right of religious

organizations to choose their religious messages does not become a blanket excuse to discriminate.

A list of the 26 additional amici follows the cover, and their statements of interest are included in the attached Appendix.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ms. Crisitello is an elementary-school teacher who in 2011 began working at Defendant St. Theresa School, a Roman Catholic parochial school, where she had once been a student. Pa215a 12:10-17 to 13:9-21, Pa216a 15:20-23.[3] Initially, she was employed as a teacher's aide in the "toddler room," and later, she began teaching art to students in kindergarten through eighth grade. Pa217a 20:3-10. Ms. Crisitello was hired as a "lay" employee, and neither her position as an art teacher nor as a teacher's aide required her to provide religious instruction to any students. Pa112a; Pa215a 12:18-24.

In mid-January 2014, the School's principal approached Ms. Crisitello about teaching additional art classes. During that conversation, Ms. Crisitello informed the principal that she was pregnant, and as such, she would like a pay increase to compensate her for taking on additional duties. Pa226a 56:11-57:23. The principal denied Ms. Crisitello's request for a pay increase. Pa227a 58:20-59:5. Two weeks later, the principal fired Ms.

[3] Amici rely on the Appellate Division Appendix ["Pa"] filed by Plaintiff on October 14, 2019 in connection with her second appeal, as well as the Appendix the School filed in support of its Petition for Certification ["Da"], for this recitation of the relevant factual and procedural history.

Crisitello because she was unmarried and pregnant——a purported violation of the School's code of conduct. Pa227a 63:14-19; 65:3-10.

In October 2014, Ms. Crisitello filed a two-count complaint against the School, alleging pregnancy and marital-status discrimination in violation of the LAD. Pa102a-107a. Twice, the trial court granted the School's motion for summary judgment, and both decisions were reversed on appeal. Da5-57. In the most recent appeal, the Appellate Division concluded, among other things, that the ministerial exception did not apply because "neither party contends that [Ms. Crisitello's] core duties as a lay teacher's aide for toddlers or as an art teacher was the same as the Church's ministers and there was no evidence that she performed any religious duties." Da19.

In support of its argument that the ministerial exception applies to a lay, elementary-school art teacher, the School relies exclusively on its Faculty Handbook and the Archdiocese's Policies on Professional and Ministerial Conduct and Code of Ethics. See Db4-6. The School argues that under the terms of Plaintiff's employment as set forth in these documents, the School viewed employees like Ms. Crisitello as "Christian Witness[es]" and part of Church personnel who "inculcate[] religious truth and values . . . [by expressing] a value-centered approach to living and learning in their private and professional lives[,]" and that this alone is sufficient to invoke the ministerial exception and

justify not complying with basic workplace civil rights laws. Db5 (quoting Pa141a).

ARGUMENT

I. UNDER UNITED STATES SUPREME COURT PRECEDENT, MS. CRISITELLO IS NOT A MINISTER.

The ministerial exception protects the autonomy of religious institutions to make internal management decisions essential to their core mission, and does so at great cost to their employees and society at large. Indeed, it exempts religious institutions from claims of invidious discrimination based on race, national origin, sex, age, disability, LGBTQ status, and other protected characteristics. Religious employers claiming the ministerial exception thus wield tremendous power over vulnerable workers who are at risk, even without notice, of losing all their workplace civil rights protections.

The ministerial exception is a stark outlier from courts' typical analysis of religious-based exemptions from civil rights protections. Except in rare cases, religious institutions are required to abide by neutral, generally applicable laws. See Emp. Div., Dep't of Human Res. v. Smith, 494 U.S. 872, 879-82 (1990). Even then, courts weigh the burden imposed on First Amendment interests against countervailing governmental interests. See, e.g., Wisconsin v. Yoder, 406 U.S. 205, 214 (1972). Courts must also consider the harmful effects a religious accommodation will have on third parties.[4]

[4] See, e.g., Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 709-10 (1985) (holding that statute requiring employers to

The ministerial exception departs from these norms. It excuses religious institutions from civil rights laws without any inquiry into whether complying with the law meaningfully burdens the employer's First Amendment interests. See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171, 194-95 (2012) ("The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason."). The exception thus wholly disregards the significant governmental and social interests in eradicating discrimination and protecting employees from harm. See Guadalupe, 140 S. Ct. at 2072 (Sotomayor, J., dissenting) ("[T]he ministerial exception even condones animus."). And it excuses an employer's discriminatory conduct at the expense of workers who then lack legal protections afforded to others. These significant, distinguishing characteristics demonstrate why the exception must be carefully cabined to ensure that it is not applied beyond its constitutional roots and purpose, when doing so comes at so great a cost to the employees who are denied rights of the highest order.

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accommodate their employees' Sabbath observance violated the Establishment Clause because of the "substantial economic burdens" it imposed on employers and the "significant burdens" it imposed on other employees); United States v. Lee, 455 U.S. 252, 261 (1982) (refusing to grant Amish employer an exemption from payroll taxes under Free Exercise Clause because of, among other things, the burden the exemption would have imposed on its employees); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977) (interpreting Title VII to require employer accommodation of employee religious practices only when costs to employers and other employees are de minimis).

Against this backdrop, federal and state courts have recognized that society's "undoubtedly important" interest in enforcing nondiscrimination laws should be eclipsed rarely and only for a very limited purpose: to prevent governmental intrusion "in filling ecclesiastical offices." See Hosanna-Tabor, 565 U.S. at 184, 196. As the ministerial exception's history demonstrates, a cabined interpretation of the exception achieves the dual goals of: (1) furthering a religious institution's freedom to select, supervise, and remove certain key employees, while at the same time (2) safeguarding the critical civil rights of workers to whom the exception should not apply. Accordingly, for the reasons explained below, applying the ministerial exception in this case does not serve its intended purpose and runs afoul of precedent from this Court and the United States Supreme Court.

A. The Ministerial Exception is a Limited Exemption from Fundamental Civil Rights Laws.

Under the First Amendment's Free Exercise and Establishment Clauses, government must not interfere in the internal "ecclesiastical" affairs between religious bodies and their "ministers." See Rayburn v. Gen. Conf. of Seventh-Day Adventists, 772 F.2d 1164, 1167-69 (4th Cir. 1985) (providing, in the first case coining the ministerial exception, that churches have the "'power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine'" under the First Amendment (quoting Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952))); McKelvey v. Pierce,

173 N.J. 26, 44 (2002) (explaining that the ministerial exception "protect[s] churches from government action that interferes with a church's internal affairs management, such as the core right to choose and regulate members of its own clergy"). Though they historically applied differing analytical tests, federal courts generally limited the ministerial exception to clergy and other key religious figures who contributed significantly to an institution's spiritual mission.[5]

The New Jersey courts adopted a comparable approach regarding the scope of this exception. In Welter v. Seton Hall University, this Court held that a breach-of-contract suit brought by two Ursuline nuns who performed "non-ministerial functions" as computer science professors did not violate the First Amendment. 128 N.J. 279, 284 (1992). The Court explained that the First Amendment bars an employment dispute when "the employee's responsibilities transform the employee into a liaison between the religion and its adherents" or when "'the employee's primary duties'" include teaching and spreading the faith, participating

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[5] See, e.g., Rweyemamu v. Cote, 520 F.3d 198, 209 (2d Cir. 2008) (ordained Roman Catholic priest); Petruska v. Gannon Univ., 462 F.3d 294, 306-08 (3d Cir. 2006) (chaplain of private Catholic university); Starkman v. Evans, 198 F.3d 173, 175-77 (5th Cir. 1999) (Choirmaster and Director of Music); Rayburn, 772 F.2d at 1167-69 (associate in pastoral care); E.E.O.C. v. Pac. Press Publ'g Ass'n, 676 F.2d 1272, 1278 (9th Cir. 1982), abrogated on other grounds Alcazar v. Corp. of Cath. Archbishop of Seattle, 598 F.3d 668, 675-76 (9th Cir. 2010) (holding that religious publishing house's editorial secretary did not qualify for ministerial exception); E.E.O.C. v. Miss. Coll., 626 F.2d 477, 485 (5th Cir. 1980) (declining to broaden ministerial exception to cover religious college's faculty members).

in "'church governance,'" supervising "'a religious order'" or "'ritual,'" or participating in "'worship.'" Id. at 294-95 (quoting Rayburn, 772 F.2d at 1168-69). Under this "ministerial function test," a religious employer's mere expectation that an employee "serve as [an] exemplar[]" of its religion did not "make the terms and conditions of their employment matters of church administration and thus purely of ecclesiastical concern." Id. at 294, 298 (internal quotation marks and citation omitted). Nor did the employer's own designation of an employee as a "minister." See id. at 298-99.

Following Welter, New Jersey courts consistently, and correctly, interpreted the ministerial exception to cover only persons who performed specific and significant religious functions. See, e.g., Alicea v. New Brunswick Theological Seminary, 128 N.J. 303, 314-15 (1992) (ordained minister and assistant professor at religious school who played an "instrumental role in training ministers" was a ministerial employee); Sabatino v. Saint Aloysius Par., 288 N.J. Super. 233, 235-37 (App. Div. 1996) (parochial school principal who was "in charge of students' religious education," acted as the "liaison between the school and the religious community, and [was] the guiding force behind the school's spiritual mission" was a ministerial employee); cf. Gallo v. Salesian Soc., Inc., 290 N.J. Super. 616, 637 (App. Div. 1996) (parochial school English and history teacher was not a ministerial employee where the only "relevant" evidence she performed a ministerial function was a

contractual agreement that she would "exemplify Christian principles and ideals in . . . her teaching and in performance of all duties assigned to her" and that "each teacher begins each class with a prayer" (internal quotation marks omitted)).[6]

The United States Supreme Court has similarly emphasized that an employee's performance of religious functions is key to the ministerial-exception analysis. Recognizing the ministerial exception for the first time in 2012, the Court held in Hosanna-Tabor that the exception prevented a teacher of religion, who was fired when she returned from disability leave, from bringing discrimination claims against the religious institution that employed her. 565 U.S. at 196. The Court observed that the exception "ensures that the authority to select and control who will minister to the faithful——a matter 'strictly ecclesiastical'——is the church's alone." Id. at 194-95 (citation omitted). "The 'ministerial' exception should be tailored to this purpose." Id. at 199 (Alito, J., concurring). The Court limited the ministerial exception's scope to those who qualify as "ministers" for legal purposes. Declining "to adopt a rigid formula" to decide who is a minister, the Court considered "all the circumstances of [the teacher's] employment." Id. at 190.

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[6] As the School notes, Gallo "preceded Guadalupe." Db12. But Gallo's finding that a religious employer's view that its "faculty members serve as 'exemplars of practicing Christians' does not automatically make their duties ministerial" aligns with the United States Supreme Court's interpretation of the ministerial exception discussed below. 290 N.J. Super. at 637.

Eight years later, the Court revisited the ministerial exception in Guadalupe, where it considered two consolidated cases involving teachers at Catholic elementary schools who had sued their employers for discrimination based on age and a breast cancer diagnosis. In holding that the exception applied to those two teachers, the Court reiterated that it must "take all relevant circumstances into account and . . . determine whether each particular position implicate[s] the fundamental purpose of the exception." Guadalupe, 140 S. Ct. at 2067. Of those circumstances, however, "[w]hat matters, at bottom is what an employee does." Id. at 2064. Accordingly, to qualify as a minister, an employee must perform certain "vital religious duties," including, for example, preaching religion, teaching or counseling others in religious doctrine or faith, or performing religious rituals. See id. at 2060-61, 2064, 2066.

The ministerial exception is thus a limited carve-out from civil rights laws and other workplace protections that would otherwise affect employers' decision-making over "the selection of the individuals who play certain key roles" in the development and transmission of the faith, Guadalupe, 140 S. Ct. at 2060, in keeping with the dictates of the First Amendment. The ministerial exception is not, however, blanket authority for religious employers to subject all of their employees to workplace discrimination without recourse.

B. "What Matters, at Bottom, is What an Employee Does," and Ms. Crisitello Did Not Perform Any Vital Religious Duties.

Applying the United States Supreme Court's analytical framework to the facts of this case demonstrates that Ms. Crisitello was not a minister. In Hosanna-Tabor, the Court held that the exception covered a teacher of religion at a Lutheran school who, in addition to having a "significant degree of religious training" and the formal title of "Minister of Religion, Commissioned," performed "important religious functions" for the Church. 565 U.S. at 191-92. Those functions included teaching "her students religion four days a week"; leading her students "in prayer three times a day"; taking her students "to a school-wide chapel service" once a week; and taking "her turn leading [the chapel service], choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible," about twice per year. Id. at 192.

In Guadalupe, the Court found that actually instructing students about the faith, guiding students "by word and deed, toward the goal of living their lives in accordance with the faith," praying with students, and preparing students "for their participation in other religious activities" constituted evidence that two teachers at Catholic elementary schools performed "vital religious duties." See 140 S. Ct. at 2066.

Here, as the Appellate Division correctly observed, unlike the teachers in Hosanna-Tabor and Guadalupe, Ms. Crisitello did

not perform any vital religious duties.[7] Ms. Crisitello was the School's art teacher and formerly a teacher's aide to toddlers. She did not teach religion or religious texts. She did not lead her students in prayer or pray with them. She did not deliver sermons or select liturgy. She did not undertake any of the training or supervisory roles over a religious school's curriculum that federal courts and this Court have held to matter when applying the exception. Nor did the School require her to perform these or any other vital religious duties. That should end the analysis.

Considering "all [these] relevant circumstances," Guadalupe, 140 S. Ct. at 2067, Ms. Crisitello was not a minister.

C. The School's Broad Interpretation of the Ministerial Exception Lacks Precedent and Would Convert the Exception into a Ministerial Presumption.

Devoid of any vital religious duties to highlight, the School argues its "distinctly Catholic mission . . . to educate and form students in the Catholic faith," its view that Ms. Crisitello was a "Christian Witness and member of Church personnel," and the general expectations of all employees set forth in its employment

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[7] The School's suggestion that comparing "the 'religious duties' of the plaintiffs in Guadalupe" with Ms. Crisitello's responsibilities would improperly entangle the judiciary "in the School's religious affairs," Db12 n.5, is misplaced. Each case must be evaluated on its unique factual circumstances; the First Amendment does not prohibit courts from looking at its prior precedents for examples of religious duties, as the Court did in Guadalupe. 140 S. Ct. at 2066 (observing that the plaintiff-teachers' "core responsibilities as teachers of religion were essentially the same" as the teacher's in Hosanna-Tabor).

documents, together qualify Ms. Crisitello as a "minister." Db10-11. But the School cannot point to a single religious duty that Ms. Crisitello performed. In essence, the School asks this Court to give complete deference to its assertion that Ms. Crisitello was a ministerial employee. Accepting the School's argument here would convert the ministerial exception into a presumption——a result that conflicts with Guadalupe and would "eclipse, and thereby eliminate, civil law protection against discrimination within a religious institution." DeWeese-Boyd v. Gordon Coll., 163 N.E.3d 1000, 1002 (Mass. 2021). The Court should reject the School's invitation to expand the exception's scope beyond Guadalupe.

First, a religious entity's own view of an employee's status does not trump a court's analysis of the employee's actual religious duties. See Guadalupe, 140 S. Ct. at 2064. Indeed, the Guadalupe majority rejected the suggestion that courts should give such unbridled deference to religious employers. While the Court in Guadalupe recognized that a religious institution's explanation of an employee's role "in the life of the religion in question is important" and that its expectations for that role may inform the Court's analysis, id. at 2066, the Court did not adopt the view of two Justices that "the Religion Clauses require civil courts to defer to religious organizations' good-faith claims that a certain employee's position is 'ministerial,'" id. at 2069-70 (Thomas, J., concurring). Had the Court intended to treat the employer's views as determinative, it would not have reaffirmed Hosanna-Tabor's

call "to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception." Id. at 2067. "[W]hat an employee does"——not what label or job title a religious employer gives an employee——is the key inquiry. Id. at 2064 (emphasis added); see also id. at 2063 ("Simply giving an employee the title of 'minister' is not enough to justify the exception."). Thus, the School's own interpretation of its employees' duties, as expressed through job titles or its employment policies, cannot overcome the Court's analysis of what is actually required of the employee or what the employee actually does. Id. at 2064.

Here, the School's generic statements in its employee handbook and policies about expecting employees "to integrate the Catholic faith" into their work or "guide [their] students, by word and deed, toward the goal of living their lives in accordance with the faith," Db14 (internal quotation marks omitted), are inconsequential absent evidence that Ms. Crisitello actually performed "vital" religious duties.[8]

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[8] In DeWeese-Boyd, the Supreme Judicial Court of Massachusetts held that the ministerial exception did not cover a professor of social work even though the defendant college said that it expected its professors to integrate Christianity into their scholarship. 163 N.E.3d at 1017-18. The Court observed that "[t]he integration of religious faith and belief with daily life and work is a common requirement in many, if not all, religious institutions." Id. at 1017. Finding an integrative-function requirement to be dispositive would thus expand the ministerial exception to all employees of religious institutions, "whether they be coaches, food service workers, or transportation providers." Ibid. "[T]he breadth of this expansion . . . and its eclipsing and elimination

Second, Guadalupe did not hold, as the School suggests, that all lay teachers at religious schools are ministerial employees. See Db12-13 (relying on Guadalupe's reference to plaintiffs' titles as Catholic elementary school "teachers of religion" as being "loaded with religious significance" to argue that Ms. Crisitello's role as an art teacher meant that she was one of her "students' primary teachers of religion" (internal quotation marks and citation omitted)). The School's position ignores that teachers play a role "loaded with religious significance" only when they actually "[e]ducat[e] and form[] students in the faith." Guadalupe, 140 S. Ct. at 2067, 2069; see also id. at 2067 n.26 ("A teacher, such as an instructor in a class on world religions, who merely provides a description of the beliefs and practices of a religion without making any effort to inculcate those beliefs could not qualify for the exception."). Just as the formal title of "minister" is insufficient alone to trigger the exception, so too is the title of "teacher." See id. at 2064, 2067 (cautioning courts not to place "undue significance" on job titles because "to decide which titles count and which do not," courts have to "look[] behind [them] to what the positions actually entail"). For these same reasons, the labels of "Christian Witness" and "a model of the Faith," and any other label or job title conferred to employees by a religious institution in human resource documents, see Db17, does not convert them into ministerial employees.

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of civil law protection against discrimination would be enormous." Ibid.

Third, following the School's proposed interpretation would invite employers to manipulate job titles, handbooks, and formal job descriptions to extend the ministerial exception beyond its constitutional purpose. Under the School's theory, employers need only assign their employees religious titles or nominal religious duties in contracts, employee handbooks, manuals, or guidebooks to avoid liability for civil rights claims. Indeed, as further explained in Section II.B. below, religious employers are being coached on how to structure their personnel materials to avoid compliance with civil rights and other employment laws. Adopting the School's position would have the perverse effect of transforming a constitutional doctrine intended to protect churches' selection of their ministers into a guidebook for how to escape liability for violations of important laws that protect workers.

Worse still, under the School's strained interpretation, every teacher and possibly every employee, regardless of the actual duties they perform, could potentially qualify as a "minister." If the School's view were embraced, many of these workers, including "coaches, camp counselors, nurses, social-service workers, in-house lawyers, media-relations personnel, and many others," Guadalupe, 140 S. Ct. at 2082 (Sotomayor, J., dissenting), who perform no meaningful religious functions, will lose their protections under federal and state civil rights and other employment laws. Neither Hosanna-Tabor nor Guadalupe compels or allows this excessive result.

In sum, endorsing the School's interpretation of the ministerial exception here will "risk[] allowing employers to decide for themselves whether discrimination is actionable." Guadalupe, 140 S. Ct. at 2076 (Sotomayor, J., dissenting). Applying Guadalupe's function-driven construction of the exception is thus necessary to avoid "transform[ing] our courts into rubber stamps" for discrimination by religious institutions. See Gallo, 290 N.J. Super. at 631 (internal quotation marks and citation omitted). Holding otherwise would provide religious institutions a blanket exemption from the LAD and, as demonstrated below, would have tremendous harmful consequences for workers.

II. ACCEPTING THE SCHOOL'S PROPOSED EXPANSION OF THE MINISTERIAL EXCEPTION WILL CAUSE SIGNIFICANT HARM TO THOUSANDS OF EMPLOYEES WHO COULD LOSE WORKPLACE PROTECTIONS, OFTEN WITHOUT ANY NOTICE.

Workplace civil rights protections are cherished in this State, as they are by our nation, and serve the compelling purpose of preventing and addressing discrimination. The LAD, which was the first state-level civil rights statute when it went into effect nearly 75 years ago, is one of the most comprehensive nondiscrimination laws in the country.[9] This Court has long

[9] The LAD prohibits discrimination, including harassment, based on actual or perceived: race or color; religion or creed; national origin, nationality, or ancestry; sex, pregnancy, or breastfeeding; sexual orientation; gender identity or expression; disability; marital status or domestic partnership/civil union status; liability for military service; age; atypical hereditary cellular or blood trait, genetic information, and the refusal to submit to a genetic test or make available to an employer the results of a genetic test. N.J.S.A. 10:5-12.

recognized society's strong interest through the LAD in ensuring equal employment opportunities and eradicating discrimination. See, e.g., Alexander v. Seton Hall Univ., 204 N.J. 219, 227-28 (2010) ("Without doubt, the LAD 'unequivocally expresses a legislative intent to prohibit discrimination in all aspects of the employment relationship . . . .'") (citation omitted)); Lehmann v. Toys R Us, Inc., 132 N.J. 587, 600 (1993) ("The LAD was enacted to protect not only the civil rights of individual aggrieved employees but also to protect the public's strong interest in a discrimination-free workplace.").

As explained above, religious employers are exempt from workplace civil rights protections such as those secured by the LAD for a limited constitutional purpose, and "[t]he 'ministerial' exception should be tailored to this purpose." Hosanna-Tabor, 565 U.S. at 199 (Alito, J, concurring). Outside of this limited exception, the First Amendment's general requirement that religious institutions abide by neutral, generally applicable laws, and its consideration of the impact a religious accommodation would have on third parties, would preclude the School from evading the LAD and other workplace protections.[10] If this Court accepts the School's inappropriately expansive understanding of the ministerial exception, which extends it far beyond its constitutional bounds, then tens of thousands of New Jerseyans working for religiously affiliated employers could lose the

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[10] See supra Argument Section I and note 4.

protection of the LAD and other applicable civil rights and nondiscrimination laws.

A. The Ministerial Exception Comes at a Great Cost to Historically Marginalized Individuals and Society-at-Large.

Curtailing civil rights protections in the manner proposed by the School will cause great harm to society at large and will exact particular harms on certain groups of people. These include women, people of color, immigrants, older workers, people with disabilities, LGBTQ people, and individuals with one or more of these overlapping identities who already face employment discrimination at alarming rates.

Sex Discrimination. Federal, state, and local laws prohibit discrimination in employment on the basis of sex. This can include discrimination in the form of harassment or unequal pay; discrimination because of pregnancy, childbirth, or related medical conditions; and discrimination tied to whether, how, and with whom to start a family. Expanding the ministerial exception would deny workers these important protections, which is particularly concerning when women are facing the brunt of the current economic crisis.[11] Despite being excluded from serving in leadership roles in some religions, women would overwhelmingly pay the price of an inappropriately expanded ministerial exception, as

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[11] See, e.g., Nat'l Women's Law Ctr., A Year of Strength & Loss: The Pandemic, The Economy, & The Value of Women's Work (Mar. 2021), https://bit.ly/3xmOToq; Nat'l Women's Law Ctr., 97% of Women Who Returned to the Labor Force in June Are Unemployed and Looking for Work (July 2021), https://bit.ly/3foOHil.

they comprise the vast majority of elementary and secondary school teachers and care workers.[12]

Sexual harassment also remains common in this nation's workplaces and in New Jersey, in particular, despite the gains following the resurgence of the #Metoo movement in recent years.[13] Workers who face sexual harassment are also often targeted on the basis of other protected classifications such as race, sexual orientation, gender identity, immigration status, pregnancy, or disability. Across industries, the rates at which Black women file sexual-harassment charges also suggest that they are especially likely to experience sexual harassment.[14] Conditioning the livelihood of an employee, such as a teacher, on her willingness to be subject to sexual harassment, or terminating an employee for complaining about it, inflicts great personal and social harm.

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[12] See U.S. Dep't of Lab., U.S. Bureau of Lab. Stats., Labor Force Statistics from the Current Population Survey, tbl.11 (last modified Jan. 22, 2021), https://bit.ly/3oOkT1y; see also Mark Weber, New Jersey's Teacher Workforce, 2019 Diversity Lags, Wage Gap Persists 14 fig.5 (2019), https://bit.ly/3xWDQn8.

[13] See U.S. Equal Emp. Opportunity Comm'n, Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic n.15 (2016), https://bit.ly/2wN7D7e; Off. of the Att'y Gen. Div. of Civ. Rts., Preventing and Eliminating Sexual Harassment in New Jersey: Findings and Recommendations from Three Public Hearings 5 (Feb. 2020), https://bit.ly/3rogX9M.

[14] Amanda Rossi, Jasmine Tucker & Kayla Patrick, Out of The Shadows: An Analysis of Sexual Harassment Charges Filed By Working Women, Nat'l Women's Law Ctr. 25-26 (2018), https://bit.ly/3cJsBUV.

Denying employees workplace protections under the ministerial exception opens them to other forms of sex discrimination. For example, Title VII, the Equal Pay Act, and the LAD prohibit discrimination based on unequal pay, and women of color face compounded discrimination in this context as in others.[15] Other forms of prohibited sex discrimination include discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions"——the very protections that Ms. Crisitello was denied. 2 U.S.C. § 2000e(k); N.J.S.A. 10:5-12. Under federal and New Jersey law, employees who are pregnant may also obtain reasonable accommodations so they don't have to choose between a healthy pregnancy and maintaining their paychecks.[16]

Protections again sex discrimination also include protections against discrimination based on sexual orientation and gender identity. See Bostock v. Clayton Cty., 140 S. Ct. 1731, 1744 (2020) ("When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex."). LGBTQ people have long experienced widespread employment discrimination,

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[15] See Nat'l Women's Law Ctr., The Wage Gap: The Who, How, Why, and What to Do 1 (Sept. 2019), https://bit.ly/2vbqSXA; Nat'l P'ship for Women and Families, Black Women and the Wage Gap 1-4 (Mar. 2021), https://bit.ly/3BnXbzT.

[16] See Young v. United Parcel Serv., Inc., 575 U.S. 206, 228-31 (2015); Nat'l Women's Law Ctr., Pregnancy Accommodations in the States 1, 3 (Sept. 2019), https://bit.ly/2TWTOLo.

including in the education sector.[17] Lesbian, gay, and bisexual workers report suffering adverse job treatment at rates 50% higher than heterosexual workers.[18] And 30% of transgender workers report suffering adverse workplace treatment based on their gender identity.[19] This discrimination has many harmful effects, including poverty, homelessness, significant adverse health effects, and drastically higher suicidal thoughts and attempts.[20] Given these realities, ensuring LAD protections for LGBTQ communities, including in the workplace, is crucial. Adopting the

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[17] Lillian Faderman, The Gay Revolution: The Story of Struggle 564-80 (2015); Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey, Nat'l Ctr. for Transgender Equal. 147-56 (2016), https://bit.ly/39E73a7; Ilan H. Meyer, Experiences of Discrimination Among Lesbian, Gay and Bisexual People in the US, The Williams Inst., UCLA Sch. of Law 1 (2019), https://bit.ly/2TMwlw0; M.V. Lee Badgett et al., Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008, 84 Chi. Kent. L. Rev. 559, 560-61 (2009).

[18] Meyer, supra note 17.

[19] James et al., supra note 17, at 148.

[20] Id. at 144 (finding 29% of respondents living in poverty, more than twice the rate for the general U.S. population); id. at 175-82; True Colors United & Nat'l LGBTQ Task Force, At the Intersections: A Collaborative Resource on LGBTQ Youth Homelessness (2019), https://bit.ly/35AnPqM; Inst. of Med. of the Nat'l Acads., The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation For Better Understanding 189-98 (2011), https://bit.ly/3342rYC; Jody L. Herman, et al., Suicide Thoughts and Attempts Among Transgender Adults, The Williams Inst., UCLA Sch. of Law 27-28 (Sept. 2019), https://bit.ly/3qgoJkc (showing that 98% of transgender individuals who have experienced multiple instances of discrimination or violence between 2018 and 2019 have thought about committing suicide and 51% attempted suicide).

School's position risks subjecting employees in New Jersey to even greater instances of these myriad forms of sex discrimination without employees having any civil rights recourse under federal, state, or local laws.

Race Discrimination. Despite racial-justice advocacy on many fronts, including intensified efforts during the last few years, race discrimination remains all too prevalent in the United States generally and in New Jersey. The country is in the midst of a long-overdue awakening to systemic racism, including renewed demands for racial justice in the workplace. As this Court has recognized: "The impact of racial injustice touches all of American society. In New Jersey, we have tried to confront systemic racism and other forms of bias in our courts."[21] Yet a broad expansion of the ministerial exception would shut the courthouse doors to countless employees experiencing race discrimination in their workplace.

Even before the recent efforts to address systemic racism, one-third of all charges filed with the Equal Employment Opportunity Commission in Fiscal Year 2019 raised race-discrimination claims.[22] Additionally, more than three in ten

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[21] Press Release, New Jersey Cts., Statement of the New Jersey Sup. Ct. (June 5, 2020), https://bit.ly/3xY6Pae.

[22] See U.S. Equal Emp. Opportunity Comm'n, Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2020, https://bit.ly/2W0tdPR (last visited Aug. 2, 2021); see also Nat'l Pub. Radio et al., Discrimination in America: Experiences and Views of African Americans 1 (Oct. 2017), https://n.pr/2TS3jve (finding that 56% of Black workers indicated they had been discriminated

Latinos report having experienced workplace discrimination in hiring (33%), or being paid equally or considered for promotion (32%).[23] Almost one-third of Native Americans report being discriminated against when it comes to being paid equally or considered for promotion (33%) or in hiring (31%).[24] A quarter or more of Asian Americans report they were discriminated against in hiring (27%) or being paid equally or considered for promotion (25%).[25] A 2019 study indicates that 26% of Latinos and 29% of Asian Americans and Pacific Islanders have been treated unfairly in hiring, pay, or promotion.[26] The harms of race discrimination are severe. Systemic inequalities in healthcare, education, incarceration, and financial practices have created a significant racial wealth gap resulting in persistent intergenerational

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against in applying for jobs, and 57% indicated they had been discriminated against in compensation or promotion).

[23] See Press Release, T.H. Chan Sch. of Pub. Health, Harvard Univ., Poll Finds One-Third of Latinos Say They Have Experienced Discrimination in Their Jobs and When Seeking Housing (Nov. 1, 2017), https://bit.ly/38wWJiY.

[24] See Press Release, T.H. Chan Sch. of Pub. Health, Harvard Univ., Poll Finds More Than One-Third of Native Americans Report Slurs, Violence, Harassment, and Being Discriminated Against in the Workplace (Nov. 14, 2017), https://bit.ly/2v67ZoL.

[25] See Press Release, T.H. Chan Sch. of Pub. Health, Harvard Univ., Poll Finds That At Least One Quarter of Asian Americans Report Being Personally Discriminated Against in the Workplace and Housing (Dec. 4, 2017), https://bit.ly/2wKREGM.

[26] See Anna Brown, Key Findings on Americans' Views of Race in 2019, Pew Rsch. Ctr. (Apr. 9, 2019), https://pewrsr.ch/2TzeE4h.

poverty for certain communities of color in New Jersey and elsewhere.[27]

This racial wealth gap means that when workers of color lose a job, they are less likely to have resources to help meet basic needs, a situation made even more dire by the COVID-19 pandemic and ensuing economic recession.[28] Empirical evidence documents the disproportionate toll that loss of employment has on the mental health of Black workers.[29] A boundless ministerial exception allows these harmful effects to flourish with impunity.

Allowing discriminatory hiring and firing carries additional harm in the education context, where students may also be impacted. Any reduction in the racial diversity of a school's educators can have far-reaching consequences for students, particularly for students of color. Studies have found that students of color with at least one same-race teacher perform better, have better attendance rates, and are suspended less frequently.[30] Despite

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[27] See N.J. Inst. for Soc. Just., Erasing New Jersey's Red Lines 5 (2020), https://bit.ly/3eIoWcJ; Rakesh Kochhar & Anthony Cilluffo, How Wealth Inequality Has Changed in the U.S. Since the Great Recession, by Race, Ethnicity and Income, Pew Rsch. Ctr. (Nov. 1, 2017), https://pewrsr.ch/3cJrDI6.

[28] See Jasmine Tucker & Claire Ewing-Nelson, One in Six Latinas and One in Five Black, Non-Hispanic Women Don't Have Enough to Eat, Nat'l Women's Law Ctr. (Nov. 2020), https://bit.ly/3ifllDj.

[29] Randall Akee, Black Americans Suffer the Most Stress From Job Loss, RealClear Mkts. (Aug. 21, 2018), https://bit.ly/2VWfJGX.

[30] See David Figlio, The Importance of a Diverse Teaching Force, BROOKINGS (Nov. 16, 2017), https://brook.gs/2IADPgK; Seth Gershenson et al., The Long-Run Impacts of Same-Race Teachers, IZA Inst. of Lab. Econs. 2-3 (Mar. 2017), https://bit.ly/35GhBWn.

gains in inclusive hiring, teachers of color are still underrepresented.[31] Expanding the ministerial exception could deprive our society of the many educational benefits of having teachers of color in schools.

National-Origin Discrimination. Federal law protects against discrimination and harassment based on an employee's ethnicity and "on the basis of citizenship whenever it has the purpose or effect of discriminating on the basis of national origin." Espinoza v. Farah Mfg. Co., 414 U.S. 86, 92 (1973). As does the LAD. N.J.S.A. 10:5-12(a). The ministerial exception would eliminate these protections, a result that is acutely harmful for immigrants, who can be particularly vulnerable to workplace discrimination. The School's argument threatens to deprive immigrant workers of recourse for this discrimination, as long as their employer classifies them as ministers through formalistic labels and paperwork.

Disability and Age Discrimination. Depriving workers of the right to seek recourse following disability and age discrimination is also extremely harmful. Congress's observation that a person's "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society," 42 U.S.C. § 12101(a)(1), remains true whether a person with a disability is

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[31] See Saba Bireda & Robin Chait, Increasing Teacher Diversity: Strategies to Improve the Teacher Workforce, Ctr. for Am. Progress 1 (Nov. 2011), https://ampr.gs/335GYOX; Colleen O'Dea, Interactive Map: Stats Show Lack of Diversity in Front of NJ Classrooms, NJ Spotlight News, (Feb. 15, 2019), https://bit.ly/3wUwn6H.

employed by a public, private secular, or religious employer. Yet workers with disabilities continue to face stigma and discrimination in employment.

When older workers suffer age discrimination, they often experience difficulty finding new jobs and are offered lower salaries.[32] Age discrimination disproportionately affects women, minorities, and lower-income workers, who face longer periods of unemployment and more difficulty re-entering the workforce or switching jobs.[33]

Retaliation. In Hosanna-Tabor, the Supreme Court applied the ministerial exception to preclude enforcement of the Americans with Disabilities Act's anti-retaliation provision. 565 U.S. at 195. Eliminating this protection harms both employees and society at large, which should give this Court further pause before expanding the exception's reach.

"Without protection from retaliation, individuals who witness discrimination would likely not report it," and "the underlying discrimination would go unremedied." Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 180-81 (2005). Accordingly, federal law and the LAD have continuously prohibited employers from retaliating against workers who report allegations of civil rights violations.

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[32] Victoria A. Lipnic, The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA), U.S. Equal Emp. Opportunity Comm'n (June 2018), https://bit.ly/3bBa1QL.

[33] See AARP, The Economic Impact of Age Discrimination (2020), https://bit.ly/3bHwjAg.

See Deborah L. Brake, Retaliation, 90 Minn. L. Rev. 18, 43 (2005); N.J.S.A. 10:5-12(d). Nonetheless, every year the EEOC receives tens of thousands of retaliation charges, more than any other kind of complaint.[34]

The cost of eliminating anti-retaliation rights is also borne by students and their families. Shielding teachers from retaliation is essential to protecting students, given that teachers are often best situated to identifying violations of the students' rights. See Jackson, 544 U.S. at 180-81 (providing example of teacher reporting principal's sexual harassment of a student). Teachers who may be positioned to report suspected child abuse must be able to do so without fear of retaliation. But if teachers——even those with no religion-related job functions——report suspected abuse at their peril, that important protection for children would be undermined. This is great cause for concern when over 140,000 children across the State rely on religiously affiliated schools——and their educational professionals, counselors, health professionals, support staff, and custodians——for their education.[35]

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[34] See U.S. Equal Emp. Opportunity Comm'n, supra note 22.

[35] See Best New Jersey Religiously Affiliated Private Schools (2021), Priv. Sch. Rev., https://bit.ly/36SNjQw ("For the 2021 school year, there are 599 religiously affiliated private schools serving 141,976 students in New Jersey.") (last visited Aug. 2, 2021). Indeed, in New Jersey and across the country, enrollment in religious schools increased over the past year as the COVID-19 pandemic forced many public schools to shift to remote learning, leaving religious schools a preferred option for many families seeking in-person instruction. Deena Yellin, In NJ and NY Suburbs, Private Schools See Enrollment Rise as Families Seek In-Person

B. Because the Ministerial Exception Renders Workplace Civil Rights and Other Employment Protections Inapplicable, Employers Are Continually Pressing to Expand its Scope.

This case arises against the backdrop of persistent efforts by some employers nationwide to expand not only the universe of employees who are considered ministers, but also the kinds of claims precluded by that classification and the types of employers who seek to claim the exception. Those efforts, taken together, highlight the far-reaching consequences of accepting the School's proposed expansion of the ministerial exception.

Range of Employees. Some employers have increased their efforts to assert the ministerial exception to insulate themselves against discrimination claims by a broad range of employees. They have tried to bar claims by secretaries and receptionists, other administrative and support staff, computer technicians, facilities workers, and college professors without any ties to the organization's religious mission.[36] See also E.E.O.C. v. Sw.

Learning, northjersey.com (Sept. 23, 2020), https://njersy.co/2TsHxlB.

[36] See, e.g., Smith v. Raleigh Dist. of N.C. Conf. of the United Methodist Church, 63 F. Supp. 2d 694, 697-98, 703-07 (E.D.N.C. 1999) (receptionist and secretary); Patsakis v. Greek Orthodox Archdiocese of Am., 339 F. Supp. 2d 689, 690-95 (W.D. Pa. 2004) ("registrar" responsible for recordkeeping and processing); Dias v. Archdiocese of Cincinnati, No. 11-00251, 2013 WL 360355, at *1, *4 (S.D. Ohio Jan. 30, 2013) ("computer technology coordinator"); Davis v. Balt. Hebrew Congregation, 985 F. Supp. 2d 701, 711 (D. Md. 2013) (facilities manager responsible for "maintenance, custodial, and janitorial work"); Lukaszewski v. Nazareth Hosp., 764 F. Supp. 57, 58-61 (E.D. Pa. 1991) ("Director of Plant Operations" at religiously affiliated hospital); Richardson v. Nw. Christian Univ., 242 F. Supp. 3d 1132, 1143-46 (D. Or. 2017)

Baptist Theological Seminary, 651 F.2d 277, 283 (5th Cir. 1981)(seminary asserting that "all its employees serve a ministerial function," including all "faculty, administrative staff, and support staff"); Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists, 401 F. Supp. 1363, 1365, 1368 (S.D.N.Y. 1975) (ministerial exception asserted against white church "typist-receptionist" fired for "maintaining a casual social relationship" with a Black man). Though courts have rightly rejected these attempts over the years, there is now a concerted effort by certain religious employers to expand the exception.

In support of these efforts, organizations like the Alliance Defending Freedom and the Lutheran Church Missouri Synod have produced a guide for "Congregations, Schools, and Ministries," to help avoid civil rights lawsuits. See Alliance Defending Freedom, Protecting Your Ministry from Sexual Orientation Gender Identity Lawsuits 4, 6 (Aug. 2016), https://bit.ly/2U3RhPB. It advises that "a religious organization should assign its employees and/or volunteers duties that involve ministerial, teaching, or other spiritual qualifications——duties that directly further the religious mission." Id. at 17. A job description for a receptionist, according to the guide, should "detail how the receptionist is required to answer basic questions about the church's faith, provide religious resources, or pray with callers." Id.; see also id. ("Consider putting forth a statement

(assistant professor of exercise science); DeWeese, 163 N.E.3d at 1002 (associate professor of social work).

of expectations that all employees and volunteers participate in devotional or prayer time when offered, or even lead these on occasion on an as-requested basis.”).

Similar advice can be found in materials prepared by Christian Legal Society, advising religious employers to design “[e]mployment documents” to “provide the biblical basis for the religious institution’s understanding of the ministerial role the employee performs,” explaining that these “safeguards may be particularly helpful because a ‘ministerial’ position is generally exempt from federal and state anti-discrimination prohibitions.” See Kim Colby, Practical Steps that Religious Institutions Should Consider in the Post-Obergefell World, The Christian Lawyer 23 (Dec. 2015), https://bit.ly/2KX0Tei.

Guidance by organizations on how employers can manipulate the ministerial exception illustrates the ways that a broadening of the exception will strip more and more employees——like a receptionist seeking time off based on her disability, an art teacher facing racial and sexual harassment, or a janitor paid less based on her national origin——of crucial civil rights unless courts carefully hold the exemption to its constitutional purposes. See also, e.g., First Liberty, Liberty Institute Religious Liberty Protection Kit for Christian Schools: Guard Your School From Legal Attack (2016), https://bit.ly/3ia9WER.

An unwarranted expansion of the exception would be particularly devastating in New Jersey, where potentially thousands of employees who perform secular jobs at the more than

600 religiously affiliated schools could lose their workplace protections without notice if the Court were to endorse the School's theory.[37] Allowing religious schools to entirely evade the LAD would not only infringe the rights of the employees, it would reduce job quality at these institutions and establish a category of employment opportunities with far fewer legal protections.[38] In a different context, this Court has already recognized the importance of employment protections for maintaining a robust educational workforce.[39] Applying the ministerial exception in this case would eliminate those protections for thousands of education professionals across our state.

Kinds of Claims. Despite the historical roots of the ministerial exception in allowing houses of worship to select their religious leaders, some religious employers have persuaded courts that any claim brought by a minister is barred by the ministerial exception. See, e.g., Demkovich v. St. Andrew the Apostle Par.,

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[37] See Best New Jersey Religiously Affiliated Private Schools (2021), supra note 35.

[38] Education is a highly mobile profession, particularly at a time when there is a critical shortage of educational professionals both nationally and in New Jersey. See Joshua Rosario, Jersey City District Reverses Plans To Reopen April 26 -- Not Enough Teachers, Superintendent Says, NJ.com (Apr. 19, 2021), https://bit.ly/3y0yuHE; Annie Buttner, The Teacher Shortage, 2021 Edition, https://bit.ly/36RtfxT (last visited Aug. 2, 2021). Eliminating workplace protections through a broad reading of the ministerial exception risks driving educators to positions in other schools, or even other states.

[39] See, e.g., Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 75-82 (1982) (broadly construing New Jersey's tenure protections to apply to remedial and supplemental instruction professions).

No. 19-2142, 2021 WL 2880232 (7th Cir. July 9, 2021) (en banc) (applying exception to statutory hostile-work-environment claims); Skrzypczak v. Roman Cath. Diocese of Tulsa, 611 F.3d 1238, 1244-46 (10th Cir. 2010) (same); Alcazar v. Corp. of the Cath. Archbishop, 627 F.3d 1288, 1292 (9th Cir. 2010) (applying to overtime and minimum wage claims of seminarian who was "hired to do maintenance of the church and also assisted with Mass"); Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 301, 308-09 (4th Cir. 2004) (applying exception to claims of Jewish nursing home employee for violations of Fair Labor Standards Act overtime provisions)[40]; Fassl v. Our Lady of Perpetual Help Roman Cath. Church, No. 05-404, 2005 WL 2455253, at *1, *6-11 (E.D. Pa. Oct. 5, 2005) (Family and Medical Leave Act). Given these boundless arguments by employers, it is critical that this Court reject efforts to expand the exemption beyond its purpose.

Kinds of Employers. Employers likewise seek to apply the ministerial exception beyond houses of worship and religious schools to a wide range of entities, including hospitals, nursing homes, rehabilitation centers, and publishers.[41] Thus, the

[40] See also Dep't of Labor, Opinion Letter, FLSA2021-2 2-3 (Jan. 8, 2021), https://bit.ly/3slegWp (indulging assumption that daycare staff and preschool teachers are "ministers" and taking position that, if so, they would lack FLSA wage protections).

[41] See, e.g., Penn v. N.Y. Methodist Hosp., 884 F.3d 416, 423-26 (2d Cir. 2018) (religiously affiliated hospitals); Hollins v. Methodist Healthcare, Inc., 474 F.3d 223, 225-27 (6th Cir. 2007) (same); Shaliehsabou, 363 F.3d at 309-11 (nursing homes); Schleicher v. Salvation Army, 518 F.3d 472, 475-78 (7th Cir. 2008)

universe of employers seeking to avoid complying with important civil rights laws by citing the ministerial exception is both vast and ever-expanding.

During the ongoing global pandemic, consider just one class of essential workers who might be harmed by extension of the ministerial exception: nurses. See Guadalupe, 140 S. Ct. at 2082 (Sotomayor, J., dissenting). Nursing is one of the largest professions in the country——comprising 3.1 million employees in 2019.[42] Approximately 1.86 million nurses work in hospitals,[43] and religious hospitals account for more than one-fifth of all hospital beds.[44] Approximately 868,000 more nurses work in outpatient care, residential care, nursing homes, and educational services, many of which are religiously affiliated.[45] A reading of the ministerial exception that creates a blanket exemption from the LAD that could be claimed by religiously affiliated healthcare institutions would be particularly harmful to nurses in New Jersey. As of May 2020, there are nearly 80,000 registered nurses in New Jersey, in

(rehabilitation center); Pac. Press Publ'g Ass'n, 676 F.2d at 1277-78 (publisher).

[42] U.S. Dep't. of Lab., Bureau of Lab. Stats., Occupational Outlook Handbook (2019), https://perma.cc/KEQ8-6CEG.

[43] Id.

[44] MergerWatch, Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report 4, https://perma.cc/7PRB-86VQ.

[45] U.S. Dep't. of Lab., supra note 42.

addition to thousands more nurse practitioners and other related nursing professionals.[46]

While amici disagree that nurses at religiously affiliated employers would broadly qualify for the ministerial exception, some religious employers will certainly attempt to expand who is considered ministerial and thus deny nurses critical workplace protections. The effect of the School's proposed expansion of the exception in the healthcare context would be significant and detrimental. Eighty-six percent of nurses nationally are female,[47] and nurses experience rampant sex discrimination in the workplace——the type of discrimination that the LAD is designed to address and prevent.[48] One study found that "forty percent of nurses felt bullied by physicians."[49] Another provided a series of sadly

[46] U.S. Dep't. of Lab., Bureau of Lab. Stats., May 2020 State Occupational Employment and Wage Estimates, New Jersey, https://bit.ly/3xZZkzm (last modified Mar. 31, 2021).

[47] U.S. Census Bureau, Full-Time, Year Round Workers and Median Earnings in the Past 12 Months by Sex and Detailed Occupation: 2019, https://bit.ly/3kG4lcL (last revised Feb. 2021).

[48] See Seun Ross et al., Sexual Harassment in Nursing: Ethical Considerations and Recommendations, 24 OJIN: The Online Journal of Issues in Nursing (Jan. 2019), https://bit.ly/3zskZAR; Jessica Castner, Healthy Environments for Women in Academic Nursing: Addressing Sexual Harassment and Gender Discrimination, 24 OJIN: The Online Journal of Issues in Nursing (Jan. 2019), https://bit.ly/3hWJakO; Jason Silverstein, Violence Is Just Part of the Job When You're a Nurse, Vice (Feb. 27, 2018), https://bit.ly/3roMcl3; Elizabeth Chuck, #MeToo in Medicine: Women, Harassed in Hospitals and Operating Rooms, Await Reckoning, NBC News (Feb. 23, 2018), https://nbcnews.to/3wYT1Lf.

[49] Silverstein, supra note 48.

routine anecdotes "about doctors who created 'an environment of fear,' intensity, and intimidation."[50] Yet another found sexual harassment to be "widespread misconduct in hospitals and other health care settings, deeply woven into the fabric of their workplaces."[51] In all, "women of every rank——from surgeons to nurses to residents" face workplace harassment——abuse that Title VII and LAD protect against.[52]

For additional context, at least ten of New Jersey's seventy-one general acute-care facilities are affiliated with the Catholic Church. In addition, RWJ Barnabas Health, one of the State's largest (and nonreligious) hospital systems, has recently acquired several Catholic hospitals that will likely seek to continue to abide by Catholic religious and ethical directives. If these acquired institutions claim continued religious affiliation and invoke the ministerial exception, it could have vast consequences for the ability of nurses and others working in healthcare in New Jersey to retain critical civil rights protections against discrimination.[53]

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[50] Id.

[51] Chuck, supra note 48.

[52] Id.

[53] There are numerous areas in our country where the only hospitals are religiously affiliated entities. Nurses and healthcare workers employed in such regions could be put to the cruel choice of either accepting workplace discrimination or finding a new post, and many may be forced to give up their profession entirely. See, e.g., MergerWatch, supra note 44, at 6–7 (listing regions in which the sole community hospitals are Catholic hospitals).

The events of the past year have only compounded long-standing state and national critical shortages of healthcare staff, including nurses.[54] As with educators, nursing is a highly mobile profession. As the State emerges from the pandemic, a significant migration of nurses out of New Jersey would have a dire impact on the State's healthcare system. As such, if the Court were to allow employers to take away employees' civil rights protections in healthcare, education, and other contexts, the State will certainly risk losing these workers at a time when we need them most.

In sum, adopting the School's boundless approach to the ministerial exception would inappropriately expand this limited carve-out from civil rights laws beyond its constitutional purpose and this Court's and the United States Supreme Court's precedents. Such an outcome would have devastating consequences for broad swaths of employees, undermine basic and long-standing employment protections established in state and federal law, and jeopardize several critical sectors of our economy. Nothing in the First Amendment compels or allows that outcome.

[54] Leah Mishkin, State Faces Nursing Shortage, Despite Increase in Nursing School Applications, NJ Spotlight News (May 3, 2021), https://bit.ly/3kE8H49.

CONCLUSION

For the reasons set forth above, amici respectfully request that the Court affirm the Appellate Division's decision below and permit Plaintiff to pursue her workplace civil rights claims.

Respectfully submitted,

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Dated: August 4, 2021

APPENDIX

STATEMENTS OF INTEREST OF 26 ADDITIONAL AMICI CURIAE

The Anti-Defamation League ("ADL") was founded in 1913 with the mission to stop the defamation of the Jewish people and to secure justice and fair treatment to all. While ADL counts among its core beliefs strict adherence to the separation of Church and State embodied in the Establishment Clause, it also believes that a zealous defense of the Free Exercise Clause is essential to the health of our religiously diverse society and to the preservation of our Republic. Likewise, ADL is a fervent advocate for the enforcement of anti-discrimination laws that aim to eradicate discrimination. Courts must be the guardians of the First Amendment guarantees to religious organizations and individuals, and of this nation's anti-discrimination laws. ADL believes that the ministerial exception, when properly applied, ensures that a religious organization is protected from undue interference with its ecclesiastical functioning where there is truly a spiritual or ecclesiastical connection between the activities of an employee engaged in clerical activities and the religious organization. To adopt a presumptive deferential exception, however, would deprive countless individuals of their right to be free from invidious forms of discrimination and would threaten to unravel the very fabric of the anti-discrimination tapestry woven into state and federal laws.

California Women's Lawyers' was chartered in 1974. It was organized "to advance women in the profession of law; to improve the administration of justice; to better the position of women in society; to eliminate all inequities based on gender; and to provide an organization for collective action and expression germane to the aforesaid purposes." California Women's Lawyers promotes the advancement of women in the legal profession and is an active advocate for the concerns of women in society.

The Clearinghouse on Women's Issues' mission is to address economic, health, education, social, political, and legal issues facing women and girls, including the elimination of bias and discrimination in all areas of society.

The Feminist Majority Foundation is a non-profit organization dedicated to eliminating sex discrimination and to promoting gender equality and women's empowerment. The FMF programs focus on advancing the legal, social, economic, education, and political equality of women with men, countering the backlash to women's advancement, and recruiting and training young feminists to encourage future leadership for the feminist movement. To carry out these aims, FMF engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs. The FMF conducts research on and supports the broad coverage and full

implementation of Title IX to protect people from sex discrimination.

Gender Justice is a 501(c)(3) legal and policy advocacy organization based in St. Paul, Minnesota. Gender Justice works to address the causes and consequences of gender inequality through strategic and impact litigation, policy advocacy, and public education. Its mission is broader than women's rights: Gender Justice fights any discrimination based on sex, gender, sexual orientation, or gender identity. Gender Justice works to address discrimination in the workplace, schools, health care, and in public accommodations. Gender Justice believes in the critical importance of eliminating discrimination in employment so that people of any gender can support themselves and their families with dignity.

GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated widely in both state and federal courts in all areas of the law, including on issues of religious exemptions, to protect the rights of LGBTQ+ people and people living with HIV and AIDS. GLAD has an enduring interest in ensuring that employees receive full and complete redress for violation of their civil rights in the workplace.

The Kentucky Association of Sexual Assault Programs is a nonprofit state coalition made up of Kentucky's 13 regional rape crisis centers. KASAP's mission is to speak with a unified voice against sexual victimization. Since 1990, KASAP has provided technical assistance and training on sexual assault issues to rape crisis programs and community partners, advocated for policy improvements, and promoted primary prevention efforts. KASAP continues to advocate to end all forms of workplace sex discrimination so that individuals can thrive economically.

KWH Law Center for Social Justice and Change is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's rights, especially the right for women to be free from discrimination. KWH has participated as an amicus curiae in a range of cases before the United States Supreme Court and continues to advocate for equal treatment of women by challenging all forms of discrimination. KWH advocates to ensure that all individuals enjoy the full protections against discrimination promised by federal law.

Interfaith Alliance Foundation is a national nonprofit organization committed to advancing true religious freedom and strengthening the separation between religion and government. With members professing over 75 faith traditions and of no faith, Interfaith Alliance promotes policies that protect personal

belief, combat extremism, and ensure that all Americans are treated equally under law.

Legal Voice, founded in 1978 as the Northwest Women's Law Center, is a non-profit public interest organization in the Pacific Northwest dedicated to protecting the rights of women, girls, and LGBTQ people through litigation, legislative advocacy, and the provision of legal information and education. Legal Voice's work includes decades of advocacy in the courts and in the Washington State legislature, advocating for robust interpretation and enforcement of anti-discrimination and other laws protecting working women. Legal Voice has participated as counsel and as an amicus curiae in numerous cases throughout the Northwest and the country, and serves as a regional expert on gender equity, including on issues related to sex discrimination in the workplace, pregnancy discrimination, caregiver discrimination, pay equity, and family leave policies.

The National Asian Pacific American Women's Forum ("NAPAWF") is the only national, multi-issue Asian American and Pacific Islander ("AAPI") women's organization in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI women, girls, and transgender and gender non-conforming people. NAPAWF approaches all of its work through a reproductive justice framework that seeks for all members of the AAPI community to have the economic, social, and political power

to make their own decisions regarding their bodies, families, and communities. NAPAWF’s work includes advocating for the reproductive health care needs of AAPI women and ensuring AAPI women’s access to reproductive health care services, including abortion care services.

The National Association of Social Workers was established in 1955 and is the largest association of professional social workers in the United States with over 110,000 members in 55 chapters. The social work profession has a longstanding commitment to civil rights and the elimination of all forms of discrimination. NASW advocates for the effective enforcement of anti-discrimination laws and regulations that forbid discrimination in the workplace. Women, people of color, older workers, workers with disabilities, LGBTQ workers, immigrant workers, and those with multiple and intertwining identities, continue to face employment discrimination at alarming rates, despite decades of civil rights protections. Any curtailing of these protections will severely harm these communities.

The National Association of Women Lawyers provides leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As

part of its mission, NAWL promotes the equality of women under the law and in the workplace.

The National Coalition Against Domestic Violence provides a voice to victims and survivors of domestic violence. NCADV's mission is to lead, mobilize and raise our voices to support efforts that demand a change of conditions that lead to domestic violence such as patriarchy, privilege, racism, sexism, and classism. NCADV is dedicated to supporting survivors and holding offenders accountable and supporting advocates. Many advocates are employed by religion-based domestic violence and social service organizations, and a ruling in favor of St. Theresa School in this matter may make such advocates vulnerable to employment discrimination.

The National Council of Jewish Women is a grassroots organization of 200,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Laws and policies that provide equal rights for all regardless of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, gender identity and expression, economic status, immigration status, parenthood status, or medical condition.

National Crittenton advocates for social, economic and political justice for cis and trans young women and gender expansive young people impacted by chronic adversity, violence, and injustice. The call to address the specific harms to women, people of color, LGBTQ individuals, and other groups at risk for further discrimination in the workplace is consistent with National Crittenton's mission to advance social, economic and political justice for girls, young women, and women.

The Reproductive Health Access Project is a nonprofit organization that mobilizes, trains, and supports clinicians to make reproductive health care accessible to everyone. RHAP focuses on three key areas: abortion, contraception, and management of early pregnancy loss. RHAP teaches and supports providing evidence-based clinical information in an unbiased, patient-centered manner. RHAP has joined many amicus briefs that have aimed to protect access to evidence-based clinical care and protect individuals' reproductive rights, which includes ensuring adequate protections in the workplace.

The Sikh Coalition is the largest community-based Sikh civil rights organization in the United States. Since its inception following the tragic events of September 11, 2001, the Sikh Coalition has worked to defend civil rights and liberties for all people, empower the Sikh community, create an environment where Sikhs can lead a dignified life unhindered by bias or

discrimination, and educate the broader community about Sikhism. The Sikh Coalition believes that St. Theresa School's proposed expansion of the ministerial exception would have an adverse effect on a great number of employees whose roles do not require them to perform any religious functions and would lead to increased workplace discrimination.

T**he Women's Law Center of Maryland, Inc.** is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center of Maryland, Inc. achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education and implementation of innovative legal-services programs to pave the way for systematic change. The Women's Law Center of Maryland, Inc. seeks to ensure the physical safety, economic security, and autonomy of women, and that cannot be achieved unless women have workplace protections and are able to make choices regarding their reproduction without undue influence by their employers.

Transgender Law Center changes law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. TLC is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their

futures. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

Ujima, Inc: The National Center on Violence Against Women in the Black Community is a national "Culturally Specific Services Issue Resource Center" funded by the Administration of Children and Families, Family and Youth Services Bureau within the U.S. Department of Health and Human Services by and through the Family Violence Prevention and Services Act. The name "Ujima" was derived from one of the Kwanzaa principles that means Collective Work and Responsibility. This principle is critical to addressing violence against Black women in the United States. Ujima Inc. through its education and outreach, training and technical assistance, resource development, research, and public policy efforts mobilizes the Black community and allies to strengthen our families, recognizing that the safety and viability of our families is connected to the health and well-being of our individual neighborhoods and communities at large.

Women Employed is a nonprofit advocacy organization based in Chicago. Founded in 1973, its mission is to improve the economic status of women and to remove barriers to economic equity. WE pursues equity for women in the workforce by effecting policy change, expanding access to educational opportunities, and

advocating for fair and inclusive workplaces so that all women, families, and communities thrive. WE works with individuals, organizations, employers, educators, and policymakers to address the challenges women face in their jobs every day. WE strongly believes that civil rights protections under state and federal law are critical to achieving equal opportunity and economic equity for women in the workplace.

Women With A Vision, Inc.'s mission is to improve the lives of marginalized women, their families, and communities by addressing the social conditions that hinder their health and well-being. A community-based organization founded in 1989 by and for women of color, WWAV's major areas of focus include sex worker rights, drug policy reform, HIV-positive women's advocacy, and reproductive justice outreach.

The Women's Bar Association of the District of Columbia, founded in 1917, is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, the WBADC continues to pursue our mission of maintaining the honor and integrity of the legal profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members. The WBADC believes that historically marginalized groups, including women, face enough challenges in the workplace as it is, so to remove

their ability to pursue civil rights claims designed to protect them is wrong.

The Women's Bar Association of the State of New York is the largest statewide women's bar association in the United States and the second largest statewide bar in New York. Its earliest chapter was founded in 1918, a year before women's right to vote was ratified in the U.S. WBASNY's 4,000+ members practice in every area of the law, including appellate, litigation, commercial, labor and employment, matrimonial, ethics, constitutional, criminal, international, and civil rights. WBASNY has participated as an amicus curiae in state and federal cases at every level and is dedicated to the fair and equal administration of justice.

Women's Law Project is a nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. Women's Law Project uses an intersectional analysis to prioritize work on behalf of people facing multiple forms of oppression based on sex, gender, race, ethnicity, class, disability, incarceration, pregnancy, and immigration status. Women's Law Project leverages impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender. Women's Law Project

believes reproductive freedom is the keystone to its work. Women's Law Project seeks equitable opportunities in many arenas including healthcare, education, athletics, employment, public benefits, insurance, and family law, and seeks justice for survivors of gender-based violence.