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SJC-12988

MARGARET DeWEESE-BOYD vs. GORDON COLLEGE & others.<sup>1</sup>

Essex. January 4, 2021. - March 5, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Religion. Constitutional Law, Freedom of religion. Anti-Discrimination Law, Religious beliefs, Employment. Employment, Discrimination.

Civil action commenced in the Superior Court Department on September 13, 2017.

The case was heard by Jeffrey T. Karp, J., on motions for summary judgment, and a question of law was reported by him to the Appeals Court.

The Supreme Judicial Court granted an application for direct appellate review.

Eric S. Baxter, of the District of Columbia, for the defendants.

Hillary Schwab for the plaintiff.

The following submitted briefs for amici curiae:

Julia E. Schlozman for Jewish Alliance for Law and Social Action & others.

Risa Lieberwitz, of Florida, Aaron Nisenson & Nancy Long, of the District of Columbia, Donald J. Siegel, James A.W. Shaw,

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<sup>1</sup> D. Michael Lindsay and Janel Curry.

& Jasper Groner for American Association of University Professors.

Gene C. Schaerr, of the District of Columbia, & Dwight G. Duncan for Council for Christian Colleges and Universities & others.

Maura Healey, Attorney General, David C. Kravitz, Deputy State Solicitor, & Abigail B. Taylor, Assistant Attorney General, for the Attorney General.

Anne L. Josephson for the Charles Hamilton Houston Institute for Race and Justice & others.

Blaine H. Evanson & Paige Muhlestein, of California, Vince Eisinger, of New York, & Joshua S. Lipshutz for Jewish Coalition for Religious Liberty & another.

Michael Francisco, of Colorado, for Robert F. Cochran, Jr., & others.

Ruth A. Bourquin for American Civil Liberties Union of Massachusetts, Inc.

Ryan P. McManus & Michael J. Puzo for Roman Catholic Archdiocese of Boston.

KAFKER, J. This case requires us to assess, in light of the recent United States Supreme Court decision in Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049 (2020) (Our Lady of Guadalupe), whether the ministerial exception applies to an associate professor of social work at a private Christian liberal arts college. When the ministerial exception applies, the employee may not claim important protections of civil law prohibiting discrimination on the basis of any protected factor, such as race, religion, national origin, sex, or sexual orientation. Such exceptional treatment is deemed necessary to protect our religious institutions against interference by civil authorities in the selection of those who minister to their faithful. We are thus presented with a potential conflict

between two fundamental American legal principles. The application of the ministerial exception could eclipse, and thereby eliminate, civil law protection against discrimination within a religious institution; in contrast, the decision not to apply the exception could allow civil authorities to interfere with who is chosen to propagate religious doctrine, a violation of our country's historic understanding of the separation of church and State set out in the First Amendment to the United States Constitution. Unfortunately, the parameters of the exception -- that is to say, who is covered by the ministerial exception -- remain somewhat unclear.

We conclude that Gordon College (Gordon) is a religious institution, but that the plaintiff, Margaret DeWeese-Boyd, is not a ministerial employee. Her duties as an associate professor of social work differ significantly from cases where the ministerial exception has been applied, as she did not teach religion or religious texts, lead her students in prayer, take students to chapel services or other religious services, deliver sermons at chapel services, or select liturgy, all of which have been important, albeit not dispositive, factors in the Supreme Court's functional analysis. The most difficult issue for us is how to evaluate her responsibility to integrate her Christian faith into her teaching and scholarship as a professor of social work.

The Supreme Court has not specifically addressed the significance of the responsibility to integrate religious faith into instruction and scholarship that would otherwise not be considered ministerial. If this integration responsibility is sufficient to render a teacher a minister within the meaning of the exception, the ministerial exception would be significantly expanded beyond those employees currently identified as ministerial by the Supreme Court. The number of employees playing key ministerial roles in religious institutions would be greatly increased. In fact, Gordon has recently attempted to describe all of its faculty, and even all of its employees, as ministers, over the objection of the faculty itself. It is our understanding that the ministerial exception defined by the Supreme Court is more circumscribed.<sup>2</sup>

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<sup>2</sup> We acknowledge the amicus briefs submitted by the Roman Catholic Archdiocese of Boston; by Jewish Coalition for Religious Liberty and Agudath Israel of America; by the Attorney General; by Jewish Alliance for Law and Social Action, Clergy and Laity United for Economic Justice, Keshet, National Council of Jewish Women, New England Jewish Labor Committee, T'ruah: the Rabbinic Call for Human Rights, and Unitarian Universalist Massachusetts Action Network; by the Charles Hamilton Houston Institute for Race and Justice, GLBTQ Legal Advocates & Defenders, Lawyers for Civil Rights, Massachusetts Employment Lawyers Association, National Association of Social Workers, and Union of Minority Neighborhoods; by American Association of University Professors; by the Council for Christian Colleges and Universities and forty-six individual religious colleges and universities; by American Civil Liberties Union of Massachusetts, Inc.; and by four religious liberty scholars.

1. Procedural history. In September 2017, DeWeese-Boyd, a tenured associate professor of social work at Gordon, commenced a civil action against Gordon and its president (D. Michael Lindsay) and provost (Janel Curry). She alleged in her complaint that the defendants unlawfully retaliated against her for her vocal opposition to Gordon's policies and practices regarding individuals who identify as lesbian, gay, bisexual, transgender, or queer (or questioning), and others (LGBTQ+ persons), by denying her application for promotion to full professor, despite the fact that the faculty senate unanimously recommended her for the promotion. Specifically, she alleged unlawful retaliation in violation of G. L. c. 151B, § 9; unlawful discrimination on the basis of her association with LGBTQ+ persons or on the basis of her gender in violation of G. L. c. 151B, § 9; as to the individual defendants, aiding and abetting discriminatory and retaliatory acts and interference with her rights in violation of G. L. c. 151B, § 4; violation of the Massachusetts Civil Rights Act (MCRA), G. L. c. 12, §§ 11H, 11I; breach of contract; breach of the implied covenant of good faith and fair dealing; and tortious interference with contractual or advantageous relations.

The parties cross-moved for summary judgment on the question whether the ministerial exception, which prohibits government interference with employment relationships between

religious institutions and their ministerial employees, barred the plaintiff's claims. See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Employment Opportunity Comm'n, 565 U.S. 171, 188-189 (2012) (Hosanna-Tabor). On April 3, 2020, a Superior Court judge allowed the plaintiff's motion and denied the defendants' motion, concluding that Gordon is a religious institution but DeWeese-Boyd was not a ministerial employee. On April 24, 2020, the same judge granted the defendants' motion to report to the Appeals Court the question whether the dismissal of the defendants' summary judgment motion was error.<sup>3</sup> We subsequently allowed Gordon's application for direct appellate review.

2. Factual background. a. Gordon. i. History and guiding principles. Gordon is a private, nondenominational Christian liberal arts college in Wenham.<sup>4</sup> It was chartered by the Commonwealth in 1889 "for the purpose of carrying on the educational work begun . . . by the Reverend Adoniram Judson

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<sup>3</sup> The reported question asks: "Did the [c]ourt err in dismissing on summary judgement the affirmative defense of the ministerial exception which was recognized by the United States Supreme Court for the first time in [Hosanna-Tabor, 565 U.S. at 188-190]?"

<sup>4</sup> Gordon is distinct from Gordon-Conwell Theological Seminary, which was formed after Gordon's divinity school separated from Gordon in 1970.

Gordon."<sup>5</sup> Its mission is "to graduate men and women distinguished by intellectual maturity and Christian character, committed to lives of service and prepared for leadership worldwide." Gordon's bylaws state that Gordon is dedicated to both "[t]he historic, evangelical, biblical faith" and "[e]ducation, not indoctrination."

Gordon's Administrative/Faculty Handbook (handbook) indicates that it is "a Christian community, distinguished from other Christian communities by its primary commitment to provide a liberal arts education." Community members, including faculty, must affirm Gordon's Statement of Faith and agree to abide by the behavioral standards in Gordon's Statement on Life and Conduct. Each undergraduate must be able to describe their faith and must complete Gordon's core curriculum, which "explores the liberal arts and sciences from a Christian perspective."<sup>6</sup> Lindsay testified, "[A]t Gordon there are no nonsacred disciplines. . . . Every subject matter that we pursue is informed by, shaped by, the Christian tradition."

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<sup>5</sup> Except where otherwise noted, quotations are taken from Gordon's Administrative/Faculty Handbook (handbook) and other official Gordon materials.

<sup>6</sup> The core curriculum includes courses in biblical studies, science, history, languages, philosophy, and physical education.

ii. Social work department.<sup>7</sup> The Gordon social work program's mission was "the education of men and women for entry level, generalist practice in social work within the context of a Christian liberal arts institution." The program's four stated goals were the "integration and application of social work and Christian values," the "understanding and application of a generalist model of social work practice," the "promotion of social and economic justice," and the "preparation of students who achieve professional competence."

iii. Faculty. A. Faculty responsibilities and tenure evaluation. In the section, "Responsibilities of Faculty," Gordon's handbook states:

"Faculty members at Gordon College are teacher-scholars. As an undergraduate liberal arts institution, Gordon values faculty who are distinguished by excellence in teaching, commitment to mentoring and advising students, and service to the College. Teaching and service also need to be continually enriched and informed by an active scholarly life. . . . To prepare students in an academic discipline, Gordon faculty need to be sound practitioners of that discipline, adding to and applying the knowledge within their respective fields of study. Furthermore, Gordon faculty members need to be interpreters of their disciplines. Not only should faculty be able to explain current methodologies and theories of their disciplines to their students and colleagues, but they should continually explore how a Christian worldview enhances, redefines, or confronts their discipline's preeminent practices and philosophical assumptions."

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<sup>7</sup> Gordon eliminated the social work major in 2019, while this case was pending.

Gordon faculty are described in the handbook as "members of a community of Christian scholars," and as "committed to imaging Christ in all aspects of their educational endeavors." The handbook is clear that Gordon's Christian perspective does not limit academic freedom, "but rather provide[s] an integrative approach to [the community's] scholarly endeavors."

The handbook divides professors' basic responsibilities -- and the bases on which tenure and promotions are evaluated -- into three categories: teaching, scholarly and professional activity, and institutional service.

In their role as teachers, faculty effectiveness is evaluated in five areas: (1) self-understanding; (2) course design and content; (3) presentation; (4) sensitivity to student needs, and (5) integration, in which the faculty member

- a. "cultivates a sense that 'knowing' is a matter not just of the intellect, but also of faith, praxis,<sup>[8]</sup> and intuitive insight";
- b. "encourages students to uncover, question, and reflect on their tacit assumptions about their world";
- c. "helps students to make inter-curricular connections";
- d. "helps students make connections between course content, Christian thought and principles, and personal faith and practice"; and

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<sup>8</sup> In a religious or philosophical context, "praxis" often means "action which arises from true belief, the manifestation of religion in practice." J. Bowker, *The Concise Oxford Dictionary of World Religions* (2016).

e. "encourages students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection."

In their role as scholars, faculty are expected to "promote understanding of their disciplines from the perspectives of the Christian faith and to engage in scholarship, professional participation, and dissemination of research and creative work appropriate to their disciplines." The handbook notes that scholarship at Gordon can be "integrative scholarship that develops Christian perspectives," but can also take other forms (specifically, disciplinary, interdisciplinary, or practical scholarship).

To satisfy their institutional service responsibilities, faculty are expected to serve in a variety of capacities, such as attending faculty meetings and serving on departmental committees, "guided by a concern to further the mission of Gordon."

As faculty members progress through the promotion and tenure processes, they are required to detail how they integrate faith and learning, including submitting an "integration paper" at the end of their third year of appointment. The faculty senate is responsible for making recommendations on applications for promotion and tenure.

Curry, Gordon's provost, testified that faculty are not required to participate in leading prayers or to attend regular

chapel services on campus. The handbook does not contain any specific reference to faculty responsibility for leading prayers.<sup>9</sup>

Lindsay, who became president of Gordon after DeWeese-Boyd was hired, testified that when he interviews a faculty member, he "will liken joining Gordon College to joining a religious order."<sup>10</sup> Formal religious training is not, however, required for employment at Gordon, although some professors have seminary degrees. Professors with seminary training do not have different titles from other professors.

B. Addition of "minister" to the handbook. In October 2016, Gordon added the following language to the handbook:

"One of the distinctives of Gordon College is that each member of faculty is expected to participate actively in the spiritual formation of our students into godly, biblically-faithful ambassadors for Christ. Faculty members should seek to engage our students in meaningful ways to strengthen them in their faith walks with Christ. In the Gordon College context, faculty members are both educators and ministers to our students."

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<sup>9</sup> Lindsay testified that leading students in prayer "would be an expectation of the job" of faculty "that I think would be communicated in the various opportunities we provide throughout the year and in the norms and expectations we have on the campus," but he provided no specific reference to what those norms and expectations are or how they are communicated other than the handbook.

<sup>10</sup> There is no evidence in the record indicating whether such a statement was made to DeWeese-Boyd.

This language was drafted by Meirwyn Walters, Gordon's counsel. The handbook did not previously use the term "minister" to describe faculty. Faculty were not informed of this change to the handbook. After they discovered the language, it was discussed at a faculty meeting in the fall of 2017, the minutes of which state:

"The language was composed by Meirwyn, and not the administration for legal reasons. This was due to cultural shifts relating to religious liberty to 'shore up' our governing documents. This allows us to trigger judicial deference to protect our First Amendment rights. . . In his opinion, this statement does not add anything new to faculty responsibilities."<sup>11</sup>

Multiple professors stated in affidavits that there was "serious opposition" to the addition of this language, in large part due to concerns that it was inaccurate, misleading, and "a significant departure from [both] the faculty's own sense of their responsibilities and calling at Gordon" and "Gordon's long-standing ethos." The Gordon chapter of the American Association of University Professors issued the following formal statement in response to the addition:

"We respectfully disagree with the designation of faculty as 'Ministers' in the most recent version of the Faculty Handbook. . . . Adopting the language of 'Minister' in a presumed attempt to bring faculty within the scope of the Ministerial Exception at best effects a mere change of

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<sup>11</sup> Walters testified that the language "wasn't a change, it was an addition of language that captured what the school had been doing historically and its expectations of faculty." Lindsay testified that this language was an attempt to "memorialize what the expectations were of our faculty."

label while wrongly describing the faculty role within the College. Attempting to shoehorn faculty into this employment category is at odds with our desire to live in a distinctive Christian community as 'Teacher-Scholars.'

b. DeWeese-Boyd. i. Employment and promotion history.

Gordon hired DeWeese-Boyd as an assistant professor in 1998. Prior to her employment at Gordon, DeWeese-Boyd worked in the mission field; received a master of arts degree in general theological studies from Covenant Theological Seminary and a master of social work degree from Washington University, both in St. Louis, Missouri; and was pursuing a doctoral degree in political science from the University of Missouri at St. Louis and a doctoral degree in social work from Washington University.<sup>12</sup> She highlighted all of these experiences in her cover letter for a tenure-track position at Gordon.

She also submitted a curriculum vitae, a statement regarding her educational philosophy, and an application detailing her personal faith, its impact on her scholarship, and her view of faculty responsibilities in a Christian higher education institution. In these documents, she listed her teaching areas as "social policy; research methods; values and ethics; the policy process; political thought; [and] community

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<sup>12</sup> DeWeese-Boyd completed her doctoral degree in political science shortly after she was officially hired. She later completed all but her dissertation in pursuit of the doctoral degree in social work.

development practice and theory." She also made statements regarding faith and her profession, specifically: "Christians have an undeniable call to minister to others"; "[m]y Christian commitment affects my scholarship by allowing me to see my work as participation in the reform of human society"; and "it is . . . the role of the Christian academic to guide and mentor each student in such a way as to help her to discern how Christianity impacts upon her particular discipline."

In 2002, DeWeese-Boyd submitted a book review as her third-year integration paper. The paper reviewed two books, titled, "The Paradox of Natural Mothering" and "The Price of Motherhood: Why the Most Important Job in the World Is Still the Least Valued." Describing the paper, DeWeese-Boyd wrote: "[W]hat I have submitted is a piece of my work that reflects my understanding of integration. In other words, I have simply submitted a piece of my work as a Christian scholar. It is work that I believe to be inherently integrated." She described the paper as integrative scholarship that brings "disciplinary insights to a wider Christian audience," as opposed to "integrative scholarship [that brings] a decidedly Christian perspective to bear on a disciplinary manner," which her paper was not.

DeWeese-Boyd was promoted to associate professor in 2004 and approved for tenure in 2009.<sup>13</sup> In 2016, she applied for a promotion to full professor. Her curriculum vitae accompanying her application detailed her work in development of the social work program,<sup>14</sup> professional memberships, and scholarly publications on primarily secular topics. She also submitted a self-evaluation, in which she reflected on her teaching, scholarly work, and institutional service.

The faculty senate unanimously recommended her for the promotion, noting her teaching effectiveness, contributions to scholarship, and leadership as director of the social work practicum. In 2017, Curry and Lindsay decided not to forward that recommendation to the board of trustees, citing a lack of scholarly productivity, professionalism, responsiveness, and engagement. The letter from Curry detailing the decision did

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<sup>13</sup> For her tenure application, she initially submitted a paper on land use and development. The provost and faculty senate asked her to be more explicit in her understanding of integration, and she then submitted a different paper, "Reflections on Christian Scholarship," for consideration for tenure.

<sup>14</sup> DeWeese-Boyd's curricular contributions included increasing the statistics requirements to provide students "with a fuller background in social scientific methods and research," introducing a course on community and sustainability, creating and coordinating a sustainable development minor, and serving as the social work practicum director.

not include any reference to religious or ministerial matters or theological disagreement.<sup>15</sup>

ii. General role at Gordon. The terms of DeWeese-Boyd's contracts<sup>16</sup> state that Gordon employed her as teaching faculty and that her responsibilities were governed by the handbook "as that may be amended from time to time . . . including subscribing to the Statement of Faith and the Life and Conduct Statement." Apart from the reference to the handbook, the contracts do not explicitly provide for any spiritual responsibilities.

DeWeese-Boyd is not ordained by any church body or denomination, nor was she ever formally commissioned or ordained as a minister for Gordon.<sup>17</sup> She was never required to complete education or professional development regarding ministerial responsibilities.<sup>18</sup> She never viewed herself or held herself out

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<sup>15</sup> DeWeese-Boyd's position was terminated when the social work major was cut in 2019, while this case was pending.

<sup>16</sup> DeWeese-Boyd submitted her contracts for the academic years 1998-1999 and 2017-2018 to the court.

<sup>17</sup> Although Gordon now holds a "Vision Day" for new faculty, which includes prayer and commissioning, Vision Day did not exist when DeWeese-Boyd was hired and she did not participate in any such commissioning.

<sup>18</sup> Gordon now conducts seminars concerning the integration of faith and learning to assist second-year faculty in writing their third-year integration paper, but Gordon did not conduct those seminars when DeWeese-Boyd was a second-year faculty, and she never attended such a seminar.

as a minister for Gordon, nor did she understand her job to include responsibility for encouraging students to participate in religious life or leading them in spiritual exercises. She did not teach religion or biblical studies to students, take students to religious services at Gordon, lead or select content for chapel services at Gordon, conduct Bible studies at Gordon, or preach at Gordon. She attended Gordon chapel services approximately twice per year.

3. Discussion. a. Ministerial exception. In Hosanna-Tabor, Chief Justice Roberts, writing for the Court, provided a historical explanation of the ministerial exception and how it arose out of the English experience of the Crown imposing its will on the selection of ecclesiastic offices and the colonists' decision to cross the ocean and free themselves "to elect their own ministers and establish their own modes of worship." Hosanna-Tabor, 565 U.S. at 182. As the Chief Justice further explained,

"The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also

violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions."

Id. at 188-189.

The Supreme Court also recognized the significant consequences of the ministerial exception. Building on a line of lower court cases, the Court held that this principle provides an affirmative defense available to religious institutions, barring employment discrimination claims against such an institution by one of its ministers. Hosanna-Tabor, 565 U.S. at 188, 195 n.4. The facts of the various cases before the Supreme Court emphasize the serious consequences of the exception. One of the plaintiffs in Our Lady of Guadalupe alleged that she was terminated because of her age. Our Lady of Guadalupe, 140 S. Ct. at 2057-2058. Another plaintiff claimed that she was terminated because she sought treatment for breast cancer. Id. at 2059. In the instant case, the plaintiff contends that she was terminated on the basis of her association with LGBTQ+ persons or on the basis of her gender in violation of G. L. c. 151B. If the ministerial exception applies, even if such allegations are true, the religious institution will be free to discriminate on those bases. The same would be true for racial discrimination or discrimination on the basis of national origin.

The potential for conflict between these fundamental legal principles is therefore obvious and of great concern, not only to the individual plaintiffs, but also for our civil society and religious institutions. While "the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission" is an undoubtedly important First Amendment right, so, too, is "[t]he interest of society in the enforcement of employment discrimination statutes." Hosanna-Tabor, 565 U.S. at 196. See Bostock v. Clayton County, Ga., 140 S. Ct. 1731, 1737 (2020) ("In our time, few pieces of federal legislation rank in significance" with legislation outlawing "discrimination in the workplace on the basis of race, color, religion, sex, or national origin"); Roberts v. United States Jaycees, 468 U.S. 609, 624 (1984) (eliminating discrimination "plainly serves compelling state interests of the highest order"); Flagg v. AliMed, Inc., 466 Mass. 23, 29 (2013) ("the Legislature determined that workplace discrimination harmed not only the targeted individuals but the entire social fabric").

Despite the high stakes, the difficult issue is not at this point whether the ministerial exception should be created -- it is well established, Williams v. Episcopal Diocese of Mass., 436 Mass. 574, 579 (2002) -- or whether it should eclipse and thereby eliminate civil law protection against discrimination -- it clearly does. Rather, the difficult issue is who is a

minister. We will return to this issue and address it in detail after considering the threshold question, which is whether Gordon is a religious institution. If Gordon is not a religious institution, as DeWeese-Boyd contends, a professor of social work at the institution is certainly not covered by the ministerial exception.

b. Application to the present case. i. Standard of review. We review summary judgment decisions de novo. Dorchester Mut. Ins. Co. v. Krusell, 485 Mass. 431, 435 (2020). "The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law." Id., quoting Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). We consider the record as a whole and need not rely on the same reasoning as the Superior Court judge. Lynch v. Crawford, 483 Mass. 631, 641 (2019).

The employer who asserts the ministerial exception as an affirmative defense has the burden of proving it. Hosanna-Tabor, 565 U.S. at 195 n.4 (ministerial exception is affirmative defense). See, e.g., Dixon v. United States, 548 U.S. 1, 2 (2006) (noting long-established common-law rule that "the one relying on an affirmative defense must set it up and establish it").

ii. Religious institution.<sup>19</sup> The Supreme Court has not directly addressed what constitutes a religious institution for purposes of the ministerial exception other than a traditional church or organized sect. See Our Lady of Guadalupe, 140 S. Ct. at 2056 n.3 (plaintiff teachers at Roman Catholic primary school employed directly by archdiocese); Hosanna-Tabor, 565 U.S. at 177 (defendant "member congregation" of Missouri synod was both church and school). Federal circuit courts have concluded that to invoke the exception, an employer need not be a traditional religious organization, so long as its "mission is marked by clear or obvious religious characteristics." Conlon v. InterVarsity Christian Fellowship/USA, 777 F.3d 829, 831, 834 (6th Cir. 2015), quoting Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 310 (4th Cir. 2004) (concluding that campus ministry whose purpose "is to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord: growing in love for God, God's Word, God's people of every ethnicity and culture and God's purposes in the world" is religious institution). See

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<sup>19</sup> The defendants argue that the question whether Gordon is a religious institution is not properly before this court given that neither party appealed from the judge's ruling that Gordon is a religious institution. However, the reported question -- whether the judge erred in applying the ministerial exception affirmative defense -- requires a conclusion as to whether Gordon is a religious institution.

Shaliehsabou, supra at 310-311 (concluding that home whose mission "is to provide elder care to 'aged of the Jewish faith in accordance with the precepts of Jewish law and customs'" is religious institution). We agree that this is the appropriate test and further conclude that Gordon satisfies these requirements.

Although the inquiry is particularly straightforward when addressing churches, temples, mosques, or religious schools affiliated with particular denominations, religious institutions are not so limited. Gordon's nondenominational nature does not preclude a finding that it is a religious institution. As the United States Court of Appeals for the Sixth Circuit explained in Conlon:

"[T]he ministerial exception's applicability does not turn on its being tied to a specific denominational faith; it applies to multidenominational and nondenominational religious organizations as well. . . . [I]n order to invoke the exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization" (quotation and citation omitted).

Conlon, 777 F.3d at 834. The Sixth Circuit concluded that InterVarsity Christian Fellowship/USA (InterVarsity), "with not only its Christian name, but its mission of Christian ministry and teaching," clearly fit the definition of a religious institution despite its lack of denominational affiliation or hierarchy. Id. Like InterVarsity, Gordon has a clear

commitment to Christian principles, as well as historical religious roots.

DeWeese-Boyd also argues that because Gordon's "primary commitment" is to provide a liberal arts education, it is not a religious institution. There is, however, no primary purpose requirement. Gordon identifies as both a Christian college and a liberal arts college, as the portion of the handbook the plaintiff quotes makes clear: Gordon is "a Christian community, distinguished from other Christian communities by its primary commitment to provide a liberal arts education." The existence of one purpose does not negate the other where Gordon's mission remains undoubtedly "marked by clear or obvious religious characteristics." Shaliehsabou, 363 F.3d at 310. All of Gordon's governing documents reference religious purposes, and all members of the Gordon community, including its faculty, are expected to articulate and affirm their faith and abide by faith-based behavioral standards. Upon review of the abundant record concerning Gordon's obvious religious character, we conclude that it is a religious institution.

iii. Ministerial employee. We now turn to the primary issue in this case: who is covered by the ministerial exception. We look to the two recent ministerial exception decisions issued by the Supreme Court, Hosanna-Tabor and Our

Lady of Guadalupe, focusing first on the facts and the specific holdings. In Hosanna-Tabor, the Supreme Court stated:

"Every Court of Appeals to have considered the question has concluded that the ministerial exception is not limited to the head of a religious congregation, and we agree. We are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us to conclude, in this our first case involving the ministerial exception, that the exception covers [the plaintiff], given all the circumstances of her employment."

Hosanna-Tabor, 565 U.S. at 190.

More specifically, Hosanna-Tabor involved an Evangelical Lutheran church and school. Hosanna-Tabor, 565 U.S. at 177. Cheryl Perich was a "called" teacher, who had undergone formal religious training and accepted a formal call to religious service. Id. at 178, 191-192. Both Perich and her employer viewed her as a minister, and her employer commissioned, reviewed, and referred to her as such. Id. at 191-192. Her formal title was "Minister of Religion, Commissioned." Id. at 191. Her job duties included "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the Word of God," and to this end she taught her students religion, led them in prayer three times a day, took them to chapel, and occasionally led the chapel service. Id. at 192. She also claimed a special housing allowance on her taxes that was available only to employees earning their compensation "in the exercise of the ministry." Id. at 191-192. In concluding that Perich was a ministerial

employee, the Court focused on "the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church." Id. at 192.

Our Lady of Guadalupe involved two teachers at Roman Catholic primary schools, Agnes Morrissey-Berru and Kristen Biel, who brought actions against their employers after demotion and discharge. Our Lady of Guadalupe, 140 S. Ct. at 2056-2059. The Court recognized the vital importance of education in the faith to many religions and applied that understanding to their analysis, concluding that the teachers were ministers:

"As elementary school teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith. And not only were they obligated to provide instruction about the Catholic faith, but they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith. They prayed with their students, attended Mass with the students, and prepared the children for their participation in other religious activities. Their positions did not have all the attributes of Perich's. Their titles did not include the term 'minister,' and they had less formal religious training, but their core responsibilities as teachers of religion were essentially the same. And both their schools expressly saw them as playing a vital part in carrying out the mission of the church, and the schools' definition and explanation of their roles is important."

Id. at 2066.

In determining who is a minister, the Court in Our Lady of Guadalupe emphasized a functional analysis:

"What matters, at bottom, is what an employee does. And implicit in our decision in Hosanna-Tabor was a recognition that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school. As we put it, Perich had been entrusted with the responsibility of 'transmitting the Lutheran faith to the next generation.' One of the concurrences made the same point, concluding that the exception should include 'any "employee" who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.'" (Citations omitted.)

Id. at 2064. The Court stressed that in making the determination whether someone is a ministerial employee, it must "take all relevant circumstances into account and . . . determine whether each particular position implicated the fundamental purpose of the exception." Id. at 2067.

We begin, as Our Lady of Guadalupe instructs, with what DeWeese-Boyd did, and what she did not do. She was, first and foremost, a professor of social work. She taught classes on sustainability and general social work practice and oversaw practicums. DeWeese-Boyd was not required to, and did not, teach classes on religion, pray with her students, or attend chapel with her students, like the plaintiffs in Our Lady of Guadalupe, 140 S. Ct. at 2066, nor did she lead students in devotional exercises or lead chapel services, like the plaintiff in Hosanna-Tabor, 565 U.S. at 192. We consider this a significant difference.

DeWeese-Boyd was, however, required to, and did, both engage in teaching and scholarship from a Christian perspective and integrate her faith into her work.<sup>20</sup> The handbook defines this faculty duty, variously, as "continually explor[ing] how a Christian worldview enhances, redefines, or confronts their discipline's preeminent practices and philosophical assumptions"; "promot[ing] understanding of their disciplines from the perspectives of the Christian faith"; "help[ing] students make connections between course content, Christian thought and principles, and personal faith and practice"; and "encourag[ing] students to develop morally responsible ways of living in the world informed by biblical principles and Christian reflection." The social work curriculum "is informed by a Christian understanding of individuals, communities, and societies," and seeks the "integration and application of social work and Christian values" and to "[e]mphasize the Christian liberal arts foundation and perspective." DeWeese-Boyd

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<sup>20</sup> The concept of integrating faith and learning in higher education is, of course, not unique to Gordon. See, e.g., Hasker, Faith-Learning Integration: An Overview, *Christian Scholar's Rev.*, vol. 21, No. 3, Mar. 1992, at 234; Smith, Liberty University, Faculty Publications and Presentations, *The Integration of Faith and Learning: Perspectives on the Librarian's Role* (June 2004), [https://digitalcommons.liberty.edu/lib\\_fac\\_pubs/2](https://digitalcommons.liberty.edu/lib_fac_pubs/2) [<https://perma.cc/VPE8-4TMQ>]. Because we are sensitive to the judiciary's necessarily limited understanding of any religious underpinnings of the concept of integration, we rely on the handbook to illuminate DeWeese-Boyd's duties in this respect.

recognized this duty by submitting scholarship on secular topics, teaching students about connections between course material and the Christian faith, and reflecting on the role of Christian scholarship in the "decidedly nonsectarian" field of social work in the "struggle against flawed social, political and economic structures."<sup>21</sup> It is undisputed that this integrative responsibility was part of her duty and function as a social work professor at a nondenominational religious institution.

We also recognize that the integrative responsibility was an important aspect of being a professor at Gordon. Curry and Lindsay referenced Gordon's history, mission, and tradition of integrating faith into education when asked about religious requirements for faculty, even likening joining Gordon to responding to a formal call to religious service. Both individual defendants testified to the effect that Gordon's nature makes every faculty member, and likely every employee, ministerial. Janitorial and kitchen staff, according to the defendants, are ministerial because they "befriend[] students," "model[] Christ-like behavior," and "nurtur[e] the students' faith commitments and maturity."

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<sup>21</sup> This language is drawn from DeWeese-Boyd's tenure paper.

Less clear is whether DeWeese-Boyd was required to take on the role of a spiritual mentor for her students beyond her duties of integrating a Christian perspective into her teaching and scholarship. The recently revised handbook describes a faculty duty to "participate actively in the spiritual formation of our students into godly, biblically-faithful ambassadors for Christ" and to "seek to engage our students in meaningful ways to strengthen them in their faith walks with Christ." Even applying this language -- added eighteen years into her employment -- to DeWeese-Boyd, there are nonetheless no formal requirements to meet with students for spiritual guidance, pray with students, directly teach them doctrine, or participate in religious rituals or services with them, but rather a general exhortation for faculty "to be fully prepared in all facets of their tasks as Christian teachers and advisors, both inside and outside the classroom."

The individual defendants have testified to the effect that taking on the role of a spiritual mentor or advisor is "part and parcel" of what it means to be faculty at a Christian college. While it may be true that Gordon employs Christians, and "Christians have an undeniable call to minister to others," this line of argument appears to oversimplify the Supreme Court test, suggesting that all Christians teaching at all Christian schools and colleges are necessarily ministers. If this were the case,

the Court could have simply said so and not developed the two-prong test and functional analysis laid out in Our Lady of Guadalupe. For this reason, we focus on the handbook's detailed expectations of faculty to understand the nature and extent of DeWeese-Boyd's duties.

In particular, we focus on DeWeese-Boyd's responsibility to integrate the Christian faith into her teaching, scholarship, and advising at a nondenominational Christian college, and whether this rendered her a minister when she did not teach religion, the Bible, or religious doctrine; did not lead her students in devotional exercises or chapel services; and was not required to pray or attend chapel with her students. In Hosanna-Tabor and Our Lady of Guadalupe, the religious instruction was specific and sectarian, and the teachers led prayers and religious rituals. These traditional ministerial acts informed, or at least provided context for, the Court's more general statements about "educating young people in their faith, inculcating its teachings, and training them to live their faith." Our Lady of Guadalupe, 140 S. Ct. at 2064.

Here, the integrative function is not tied to a sectarian curriculum: it does not involve teaching any prescribed religious doctrine, or leading students in prayer or religious ritual. Yet it does involve integrating the Christian faith generally into teaching and writing about social work. Whether

this more general religious reflection was meant to be included in the Supreme Court's statement about "educating young people in their faith," and is enough to render her a minister, is not directly answered by precedent. Id.

We do not find DeWeese-Boyd's title or training to provide decisive insight into resolving the difficult question whether she was a minister. More specifically, DeWeese-Boyd's formal title, "associate professor of social work," does not indicate any religious position. The revised handbook does describe all faculty not only as educators, but also as ministers; that paragraph was, however, added to the handbook in October 2016 -- eighteen years after DeWeese-Boyd was hired, and just two months before she was unanimously recommended for promotion to full professor. All that being said, "[s]imply giving an employee the title of 'minister' is not enough to justify the exception." Our Lady of Guadalupe, 140 S. Ct. at 2063. "A religious institution's explanation of the role of such employees in the life of the religion in question is important," id. at 2066, but the Court has not adopted the position of two of its concurring justices that we must accept Gordon's view as binding where there is disagreement, see id. at 2069-2070 (Thomas, J., concurring, with whom Gorsuch, J., joined) (expressing view that courts should "defer to religious organizations' good-faith claims that a certain employee's position is 'ministerial'");

Hosanna-Tabor, 565 U.S. at 196 (Thomas, J., concurring) (same). See also Sterlinski v. Catholic Bishop of Chicago, 934 F.3d 568, 571 (7th Cir. 2019) (courts are competent in "separating pretextual justifications from honest ones," and church's claim that organist was minister "reflects a longstanding tradition; it is not an explanation hoked up for the occasion"); Grussgott v. Milwaukee Jewish Day Sch., Inc., 882 F.3d 655, 660 (7th Cir.), cert. denied, 139 S. Ct. 456 (2018) (deferring to organization on question of distinction between secular and religious organization "where there is no sign of subterfuge").

In this instance, the label is uninformative, not only because it was added so late in DeWeese-Boyd's tenure, but also because there is abundant evidence in the record of what was required and expected of Gordon faculty during her employment there and our focus, as the Supreme Court has directed, is on function. Rather than rely on this late labeling of DeWeese-Boyd's position, we return again to the functional analysis recommended in Our Lady of Guadalupe. She was a teacher of social work, expected and required to integrate the Christian faith into her teaching, scholarship, and advising.

Like her title, DeWeese-Boyd's training provides some guidance, but is not dispositive as to any ministerial status. On the one hand, she is not ordained, has not otherwise accepted formal religious service, and was never formally commissioned by

Gordon. Cf. Hosanna-Tabor, 565 U.S. at 191-192. Also, unlike the plaintiff in Hosanna-Tabor, DeWeese-Boyd's position did not require the formal religious training that she obtained, and she was not given a different title because of it. On the other hand, the seminary training appears to have been relevant to her initial hiring, and it provided her with knowledge upon which she could have drawn to perform her integrative responsibilities. In Our Lady of Guadalupe, the Court cautioned against placing too much weight on formal training, at least at the elementary school level:

"the Ninth Circuit assigned too much weight to the fact that Morrissey-Berru and Biel had less formal religious schooling than Perich. The significance of formal training must be evaluated in light of the age of the students taught and the judgment of a religious institution regarding the need for formal training. The schools in question here thought that Morrissey-Berru and Biel had a sufficient understanding of Catholicism to teach their students, and judges have no warrant to second-guess that judgment or to impose their own credentialing requirements." (Citations and footnote omitted.)

Our Lady of Guadalupe, 140 S. Ct. at 2067-2068.

In addition to her title and training, which go to the question whether Gordon held DeWeese-Boyd out as a minister, we consider whether DeWeese-Boyd ever held herself out as a minister for Gordon.<sup>22</sup> See Hosanna-Tabor, 565 U.S. at 191-192.

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<sup>22</sup> The defendants would have us rely, in part, on DeWeese-Boyd's professed faith in determining that she was a minister. DeWeese-Boyd has made several statements concerning the importance of her faith to her life and how it motivates her

This factor, although again not dispositive, weighs against finding that the ministerial exception applies. It is clear that she did not view herself as a minister, either formally or informally, in her role as a professor at Gordon. On the contrary, she was part of the group of professors opposed to the addition of "minister" to the handbook because they viewed it as "wrongly describing the faculty role within the College."

Unlike Perich, she never held herself out as a minister or referred to herself as such, and never claimed a ministerial housing allowance. See id.

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personal choices, including her choice of profession and the manner in which she practices it. We are, however, cautioned against inquiring into what it means for her to practice her faith. See Our Lady of Guadalupe, 140 S. Ct. at 2069 (argument that plaintiff was not within ministerial exception because she was not "practicing Catholic" rejected because it "would require courts to delve into the sensitive question" of meaning of "practicing"). We may, and do, consider that she was required to share and affirm Gordon's Statement of Faith as a duty of her job; but we cannot, as the defendants suggest, rely on her professions as evidence that DeWeese-Boyd was a minister. Her personal statements of faith are not equivalent to expressly holding herself out as a minister, as Perich did in Hosanna-Tabor; as the defendants themselves testified, being a Christian and being a ministerial employee are not the same. See Hosanna-Tabor, 565 U.S. at 191-192; Richardson v. Northwest Christian Univ., 242 F. Supp. 3d 1132, 1145 (D. Ore. 2017) ("although there is ample evidence plaintiff held herself out as a Christian, there is no evidence she held herself out as a minister"). The notion that, in DeWeese-Boyd's words, all Christians have "an undeniable call to minister to others" cannot be the basis of the ministerial exception, or else the exception would swallow the rule in every Christian context. Cf. Our Lady of Guadalupe, supra at 2055 (ministerial exception applies to "employment relationship between a religious institution and certain key employees").

Having evaluated "all relevant [material] circumstances," Our Lady of Guadalupe, 140 S. Ct. at 2067, we conclude that a faculty member with DeWeese-Boyd's responsibilities at Gordon is significantly different from the ordained ministers or teachers of religion at primary or secondary schools in the cases that have come before the Supreme Court.<sup>23</sup> DeWeese-Boyd was not

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<sup>23</sup> The parties have identified several decisions from courts other than the United States Supreme Court that involve a ministerial exception analysis in an educational setting, but all except one were decided prior to Our Lady of Guadalupe, and none is directly analogous to the determination we must make. See Temple Emanuel of Newton v. Massachusetts Comm'n Against Discrimination, 463 Mass. 472, 486 (2012) (teacher of "religious subjects at a school that functioned solely as a religious school, whose mission was to teach Jewish children about Jewish learning, language, history, traditions, and prayer" was ministerial employee); Menard v. Archdiocese of Boston, 98 Mass. App. Ct. 144, 150 (2020) (parish "director of music ministries" who "prayerfully" selected music and was expected to transmit "significant knowledge of her faith's musical canon" and "convey[] the Church's message" was ministerial employee); Grussgott, 882 F.3d at 659-660 (Hebrew teacher whose resume "tout[ed] significant religious teaching experience" and who followed religious curriculum, "integrate[d] religious teachings" into lessons, "taught her students about Jewish holidays, prayer, and the weekly Torah readings," prayed, and performed certain religious rituals with students was ministerial employee); Fratello v. Archdiocese of N.Y., 863 F.3d 190, 195, 208-209 (2d Cir. 2017) (Catholic school principal who expressly applied for "important leadership role" with archdiocese, "understood that she would be perceived as a religious leader," supervised leadership of Masses, led daily prayers, and updated parents on students' spiritual development was ministerial employee); Lishu Yin v. Columbia Int'l Univ., 335 F. Supp. 3d 803, 817 (D.S.C. 2018) (teacher of English language at private Christian university who directly engaged in students' spiritual formation by requiring them to pray together, directly preparing them for ministry roles, and

ordained or commissioned; she was not held out as a minister and did not view herself as a minister; and she was not required to

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planning and leading chapels was ministerial employee); Richardson, 242 F. Supp. 3d at 1145-1146 (assistant professor of exercise science with no specialized religious training at Christian university who "was expected to integrate her Christianity into her teaching and demonstrate a maturing Christian faith," did not perform religious instruction, and "was charged with no religious duties such as taking students to chapel or leading them in prayer" was not ministerial employee); Braun v. St. Pius X Parish, 827 F. Supp. 2d 1312, 1319 (N.D. Okla. 2011), aff'd, 509 Fed. Appx. 750 (10th Cir. 2013) (Catholic school teacher required to "teach and act in accordance with the precepts of the Catholic Church" and to "aid in the Christian formation of students" who did not teach religion or lead students in prayer and was not Catholic was not ministerial employee); Adams vs. Indiana Wesleyan Univ., U.S. Dist. Ct., No. 3:09-CV-468 (N.D. Ind. July 15, 2010) (social work professor at university governed by Wesleyan church who incorporated church doctrine into classroom activities, used scriptural principles to illustrate ideas, and led "in-class 'devotions'" was ministerial employee); Stately v. Indian Community Sch. of Milwaukee, Inc., 351 F. Supp. 2d 858, 869 (E.D. Wis. 2004) (teacher who "integrate[d] Native American culture and religion" into classes, participated in and led religious ceremonies, and served as mentor to students regarding their spiritual health was ministerial employee); Kirby v. Lexington Theological Seminary, 426 S.W.3d 597, 611-614 (Ky. 2014) (seminary professor of Christian social ethics who gave sermons on multiple occasions, served communion, taught classes on religious doctrine, opened class with prayer each day, affirmatively promoted students' development in ministry, and served as representative of seminary at events on multiple occasions was ministerial employee); Kant v. Lexington Theological Seminary, 426 S.W.3d 587, 593-595 (Ky. 2014) (Jewish professor of religious studies and history of religion at Christian seminary "was a source of religious instruction but did not play an important role in transmitting the Seminary's faith to the next generation" and thus was not ministerial employee [quotations and alteration omitted]).

undergo formal religious training, pray with her students, participate in or lead religious services, take her students to chapel services, or teach a religious curriculum. Her responsibility to integrate the Christian faith into her teaching, scholarship, and advising was different in kind, and not degree, from the religious instruction and guidance at issue in Our Lady of Guadalupe and Hosanna-Tabor. See Hosanna-Tabor, 565 U.S. at 199 (Alito, J., concurring) ("The First Amendment protects the freedom of religious groups to engage in certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith").

We recognize that some of the language employed in Our Lady of Guadalupe may be read more broadly, in a way that would include every educator at a religious institution. As Gordon has stated, the integrative function applies to all teachers at the college, whether they teach computer science, calculus, or comparative religion.<sup>24</sup> See Richardson v. Northwest Christian

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<sup>24</sup> At some points, the defendants have suggested DeWeese-Boyd was a ministerial employee because she was a professor of social work and there is a strong connection between the field of social work and Christian values. It is clear that Gordon does not view any one subject as more sacred or less so than others. To rely on evidence implying that social work is particularly Christian would require us to go too far in examining the defendants' testimony as to the Protestant beliefs underpinning Gordon's educational philosophy.

Univ., 242 F. Supp. 3d 1132, 1138-1139, 1145-1146 (D. Ore. 2017) ("If plaintiff was a minister, it is hard to see how any teacher at a religious school would fall outside the exception. Courts have properly rejected such a broad reading . . . , which would permit the ministerial exception to swallow the rule that religious employers must follow federal and state employment laws").

It would also apply, Gordon implies, to all its employees, as integrating the Christian faith into daily life and work is part of the college's mission for everyone in the community,<sup>25</sup> whether they be coaches, food service workers, or transportation providers. This would provide a significant expansion of the ministerial exception well beyond "individuals who play certain key roles" in a religious institution. Our Lady of Guadalupe, 140 S. Ct. at 2060. It would also change the existing understanding of those "personnel who are essential to the performance" of the religious instructions, services, and rituals. Hosanna-Tabor, 565 U.S. at 199 (Alito, J., concurring). The integration of religious faith and belief with daily life and work is a common requirement in many, if not all, religious institutions. As a result, the breadth of this

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<sup>25</sup> Gordon's Statement of Life and Conduct includes "recognizing the Lordship of Christ in every activity" and a "responsibility for service to others" among its foundational biblical principles.

expansion of the ministerial exception and its eclipsing and elimination of civil law protection against discrimination would be enormous.

We recognize that a case need not mirror Hosanna-Tabor and Our Lady of Guadalupe in order for the ministerial exception to apply. Here, however, the facts are materially different. Thus, the significant expansion of the ministerial exception doctrine requested by Gordon is not dictated nor, do we believe, directed by existing Supreme Court precedent. It is our understanding that the ministerial exception has been carefully circumscribed to avoid any unnecessary conflict with civil law.

In sum, we conclude that DeWeese-Boyd was expected and required to be a Christian teacher and scholar, but not a minister.<sup>26</sup> Therefore, the ministerial exception cannot apply as a defense to her claims against Gordon.<sup>27</sup>

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<sup>26</sup> The distinction between being a Christian teacher and scholar and a Christian minister is one DeWeese-Boyd has drawn herself and is one drawn by many of Gordon's faculty in response to the change in the handbook that occurred eighteen years into her tenure, and that attempted to collapse the distinction. The defendants have also testified that being a Christian scholar and a Christian minister, or a Christian and a Christian minister, are not equivalent, although they maintain that Gordon faculty are both.

<sup>27</sup> Because we conclude that DeWeese-Boyd was not a ministerial employee, we need not reach the question whether the ministerial exception bars her contract claims. See Hosanna-Tabor, 565 U.S. at 196 ("We express no view on whether the exception bars other types of suits, including actions by

4. Conclusion. We answer the reported question in the negative. The Superior Court judge did not err in dismissing on summary judgment the affirmative defense of the ministerial exception, which was recognized by the United States Supreme Court for the first time in Hosanna-Tabor, 565 U.S. at 188-190. The case is remanded for further proceedings consistent with this opinion.

So ordered.

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employees alleging breach of contract or tortious conduct by their religious employers").