

IN THE
Supreme Court of the United States

No. 2026-2027

PALMER COFFEE ROASTERS, INC.,

Petitioner,

v.

STATE OF NEW STORKE,

Respondent.

On Writ of Certiorari to the Supreme
Court of the State of New Storke

ORDER OF THE COURT

The petition for a writ of certiorari is granted, limited to the following questions:

1. Whether the First Amendment's ministerial exception bars the State of New Storke's age discrimination suit against Palmer Coffee Roasters?
2. Whether the Fair and Open Nondiscriminatory Trade Act violates the Free Speech Clause of the First Amendment, on its face or as applied to Palmer Coffee Roasters?

IN THE SUPREME COURT OF THE
STATE OF NEW STORKE

No. 1104-1993

STATE OF NEW STORKE, *Plaintiff—Appellant*

v.

PALMER COFFEE ROASTERS, INC., *Defendant—Appellee*

Appeal from the New Storke Court of Appeals
for the Fifth District

JUSTICE O'REEDY delivered the opinion of the Court, in which RUSANI, C.J., and STEEVINGTON, J., joined. JUSTICE GORBANZO filed a dissenting opinion, in which MADIA, J., joined.

JUSTICE O'REEDY:

Palmer Coffee Roasters is a nationwide chain of coffeehouses not unlike Starbucks or The Coffee Bean. Its founder, Lewis Palmer, started the company in 1920 after receiving a spiritual revelation: that caffeine was a divine gift, and consuming it a holy ritual.

The Palmer faith has no formal church, but every prophet of the religion beginning with Palmer has acted as Chief Executive Officer of the for-profit Palmer Coffee. The company's work is infused with religious significance—it distributes proselytizing pamphlets to customers and calls its baristas "Preparers" in recognition of their role in the Palmer sacrament of coffee consumption.

Marisol Torelli was a Preparer until Palmer Coffee fired her in 2025. The State of New Storke sued on her behalf, alleging that the firing violated its antidiscrimination law. Palmer Coffee responded that the State's lawsuit was barred by the "ministerial exception," a First Amendment doctrine that says that the state

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may not interfere with the hiring and firing of a church's ministers. Under this theory, the company says, it is effectively a church of the Palmer faith, and Torelli was its minister.

Palmer Coffee has also brought a counterclaim against New Storke over a separate dispute. The company had catered state events for a decade, but the State declined to renew the contract after finding that Palmer Coffee was boycotting the nation of Amcadia in violation of the State's anti-boycott law. The company alleges that the law violates the First Amendment by punishing it for its political expression.

The Superior Court granted summary judgment to Palmer Coffee on both claims. The Court of Appeals affirmed; we granted review. We now reverse the Court of Appeals. Palmer Coffee's actions are ordinary commerce, not First Amendment-protected conduct.

I

A

1

The Palmers trace their faith to Lewis Palmer, a coffeehouse keeper in New Storke. In 1918, as the story is told, Palmer received a revelation while roasting a batch of beans: caffeine was a divine gift, and its consumption prepared the body and soul for the afterlife. Palmer spent the rest of his life spreading this teaching, and he personally commissioned his earliest followers as Preparers—a title the Palmers use to this day. Palmers believe that upon the founder's death, his prophetic mantle passed to a chosen successor, and that it has passed in an unbroken line ever since. Solomon Shen, who received it in 2011, is the fourth prophet to hold it. Palmers regard the prophet as a divine figure.

The sacrament of caffeine consumption is the center of Palmer practice. To the Palmers, it is a necessary and holy ritual that serves the body and soul and readies them for the afterlife. Palmers are also taught that they must spread their beliefs throughout their lives. The faith has no meeting houses and no clergy apart from the prophet and the Preparers he commissions. Adherents perform the sacrament

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at home and at the counters of Palmer Coffee, and the prophet's teaching reaches them through the company's shops and the pamphlets it prints and publishes online.

Among the Palmer teachings is a doctrine known as the Transition. The doctrine teaches that, at age fifty-five, the body and soul turn from service to preparation: having spent the working seasons readying others for the afterlife, believers must devote the years that remain to readying their own. Coffee prepared by hands past their season is spiritually inert, and to serve it profanes the sacrament. The Transition therefore forbids anyone aged fifty-five or older from serving as a Preparer. Lewis Palmer himself laid down his roasting implements on his fifty-fifth birthday and never prepared another cup.

In 1920, Lewis Palmer incorporated Palmer Coffee Roasters to carry the faith beyond his small circle of followers. Its articles of incorporation state that the company's purpose is "to spread the word of the Palmers and to bring the Holy Sacrament of Caffeine to all." Palmer Coffee is a for-profit corporation. The prophet has always been its sole shareholder and chief executive; on each prophet's death, both roles have passed on to his successor. The company sells coffee and other caffeinated beverages to the general public at thirty locations in seven states; its headquarters and most of its shops are in New Storke. None of its locations are franchised.

2

Shen attempts to hire Palmers as Preparers wherever possible. He believes that Palmer Coffee's mission is best achieved when believers roast, grind, brew, and pour coffee for adherents and non-adherents alike. Palmer Coffee does not use traditional coffee-shop titles: probationary hires are Novices, baristas are Preparers, and the supervisor of each location is an Overseer.¹ Consistent with the Transition,

1. Roughly 80% of Palmer Coffee's employees bear a title of Novice, Preparer, or Overseer. The remaining 20% serve in various back-office roles such as accounting and IT. The company does not assert any religious significance in these non-customer-facing, non-coffee-preparing roles.

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no Preparer serves past the age of fifty-five. Those who reach that age retire, and the company has never made an exception.

Palmer Coffee hires both Palmer and non-Palmer Preparers. Regardless of an employee's religion, each Preparer is expected to understand the core tenets of the Palmer religion and the rituals required when preparing coffee. To that end, any Preparer—Palmer or non-Palmer—who is asked about the Palmer religion must spread the word of the Palmers and distribute prepared pamphlets. It is company policy that each Preparer must always prioritize spreading the word of the Palmers to interested customers over all other duties (such as taking orders, cleaning, or grinding coffee).

3

Marisol Torelli was born and raised in Silliman, New Storke, where she still lives. After high school, Torelli took a job as a barista at the Meridian Coffee Company in Silliman. She grew to love the work, spending hours outside her shifts studying coffee roasting and the global coffee trade.

In 2014, Meridian Coffee underwent layoffs and Torelli, then in her mid-forties, lost her job. Seeking new barista work, she found a posting for a Preparer position at Palmer Coffee on an online, secular job board and applied. She interviewed with Shen himself (who takes great care to ensure only trusted people work as Preparers, interviewing many candidates personally), and Shen hired her as a Novice for a six-month probationary period. During this time, Torelli prepared coffee as any Preparer would, but only under a Preparer's supervision to ensure the religious procedure was performed correctly.

Throughout her probation, Torelli studied the core tenets of the Palmer religion, as the job requires. She is not a Palmer herself; she is a practicing Catholic. Nonetheless, she learned the tenets, rituals, and sacraments necessary to become a competent Preparer. At the end of the probationary period, Shen personally commissioned Torelli as a Preparer, as he does for every Novice who completes the training.

Torelli proved an exemplary Preparer. She drew on her years of industry experience and personal passion for coffee to assist customers and drive sales, and,

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in keeping with her training and job duties, she enthusiastically shared Palmer religious beliefs with them. Several online customer reviews commended Torelli by name:

“I’m a ‘coffee snob,’ and plan to return to Palmer Coffee Roasters very soon. Great coffee. Marisol was tremendously helpful as I sought out my new daily blend.”

“I. LOVE. MARISOL! 5-star employee at a 5-star coffee shop!!!”

“This establishment is imbued with spiritual purpose. Employees like Marisol make that clear. She is a coffee aficionado, but (more importantly) she is a dedicated Preparer in keeping with Palmer spiritual traditions.”

4

Torelli turned fifty-five in 2025. The Transition had been covered in her Novice training, and during her years at Palmer Coffee two older Preparers had retired on their fifty-fifth birthdays in accordance with it.

Shortly before Torelli’s birthday, Shen met with her and told her that her employment as a Preparer would end on that date. Torelli asked to continue working. She noted that she was not a Palmer and did not subscribe to the Transition, and that her performance had never been questioned. Shen agreed that her performance was not at issue. He explained that under Palmer teaching the Transition applies to every Preparer regardless of the Preparer’s own beliefs, and that he could not make an exception.

Torelli’s termination took effect on her fifty-fifth birthday.

B

1

No country grows more coffee than Amcadia, and none sells more of it to New Storke. Amcadian beans are prized for their taste and for their price, and they account for roughly half the coffee sold in the State.

The Palmer faith reached Amcadia through the coffee trade: many of Palmer Coffee’s buyers, first sent to the highland district of Alto in the 1920s, settled

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among the growers they bought from, and the faith spread with them. Today roughly 80,000 Palmers live in Amcadia, nearly all of them in Alto, where they make up about a quarter of the population.

Prejudice against Palmers in Amcadia is longstanding. Amcadia's constitution establishes the Church of Amcadia as the national religion, and Palmers are widely regarded as adherents of a foreign faith. Palmers in Alto report being verbally accosted, denied economic opportunities, and excluded from public services because of their beliefs.

In 2022, the Amcadian Purity Front (APF), a religious extremist group responsible for spreading much of the vitriol against Palmers in Amcadia, initiated a series of violent, targeted attacks against Palmers. Many of the attacks were organized through social media channels on which APF members circulated the names and addresses of Palmer families and businesses in Alto. The violence lasted five weeks. APF members assaulted dozens of Palmers and robbed or burned down many more Palmer homes and businesses. Several Palmers were murdered.

A 2023 report of the United Nations Human Rights Council concluded that Amcadian authorities had "failed to prevent, investigate, or punish" the attacks. The report also documented that police had raided Palmer homes, confiscated Palmer literature, and dispersed household gatherings for the sacrament. Complaints of APF violence, the report found, were "consistently ignored or downplayed" by local law enforcement.

Roughly 60,000 Palmers live in New Storke, the largest Palmer community in the United States, and the attacks drew sustained attention there. Some New Storke businesses stopped buying Amcadian products, and there were small protests. For several weeks, the attacks and the response to them were a fixture of local news coverage.

Palmer Coffee advertises itself as an international coffee shop, and Amcadian beans had always featured prominently in its selection. Days after the first attacks, Shen directed every Palmer Coffee location to stop purchasing Amcadian beans and to clear all Amcadian coffee from its shelves and menus. The company

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left the sections in place, however: rows of purposely empty shelves beneath signs reading “Amcadian Coffee.” In place of the coffee, Shen erected signs saying, “We proudly do not sell coffee from the evil, fascist, and disgusting Amcadia.”

The company also explained itself on its website. A statement on the site’s front page, titled “Why We No Longer Sell Amcadian Coffee,” recounts the attacks in Alto and the Amcadian government’s response to them and concludes: “For a century we have bought our beans from the growers of Alto, many of whom are our brothers and sisters in faith. We will not buy from a country whose government lets them be beaten, burned out of their homes, and killed. This is not a business decision. It is the only way a coffee company has to say what it thinks.” The company has also published a number of shorter posts on the same page urging customers to write to their legislators and to stop buying Amcadian products themselves.

3

Amcadia is New Storke’s largest trading partner, buying more of the State’s machinery and farm equipment than any other country, and Amcadian firms have invested heavily in Silliman’s port and rail terminals. Most Amcadian coffee bound for the United States enters through that port. Roughly 400,000 New Storkers are of Amcadian descent.

Support for Amcadia in New Storke politics is broad and bipartisan. The New Storke–Amcadia Friendship Caucus counts a majority of both chambers of the New Storke state legislature as members. The caucus is chaired by Senator Elsie Ailri, whose district includes Silliman. When boycotts of Amcadian goods spread after the 2022 attacks, Senator Ailri told a reporter: “To be anti-Amcadia is un-American. We cannot let this get out of hand; we must protect our state economy.”

Senator Ailri introduced the Fair and Open Nondiscriminatory Trade Act (FONTA) in the next session. The Act’s findings declare that boycotts of Amcadia “discriminate against Amcadians and Amcadian Americans on the basis of national origin” and “threaten the economic welfare of the State.” Twenty-two other states had enacted similar measures with respect to other trading partners; New Storke’s was modeled on them. The legislature passed FONTA by a narrow majority in

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2023. Governor Jean Ganituk, himself a vocal supporter of Amcadia, signed the bill into law shortly thereafter.

FONTA prohibits public entities from entering into or renewing contracts with private companies if they “[are] currently participating in a boycott of Amcadia with the intent to boycott Amcadia.” N.S. Gen. Stat. § 245(a). FONTA defines “a boycott of Amcadia” as “taking any action intended to terminate business with, to penalize, to refuse to conduct business with, or to limit commercial relations with Amcadia or a person or entity that is engaging in transactions in Amcadia.” *Id.* § 245(b).

4

Each year, the City of Silliman, New Storke, hosts the American Postal Services Conference (APSCON), the nation’s premier gathering for mail and distribution services. The conference is held at the Silliman Convention Center, a venue owned and operated by the State. Since 2014, Palmer Coffee has contracted with the State to provide coffee for attendees at all morning events connected with APSCON.² The State rehired Palmer Coffee every year on the strength of consistently positive reviews from conference attendees.

On March 2, 2024, the Convention Center sent Palmer Coffee a contract for that year’s conference. That evening, an anonymous X account called Storke Watch published a photograph of a sign inside a Palmer Coffee location. The sign read: “We proudly do not sell coffee from the evil, fascist, and disgusting Amcadia.” Storke Watch, which has some 300,000 followers, posts about businesses and public figures it regards as hostile to Amcadia. Its post tagged Governor Ganituk and asked, “@JeanForYou This company has poured the coffee at APSCON for ten years. Is this who New Storke does business with?” The next morning, the Governor reposted it with the added commentary, “Looking into it.”

On March 4, the Convention Center withdrew the contract offer. Its letter stated, in relevant part: “It has come to the Center’s attention that Palmer Coffee Roasters is currently participating in a boycott of Amcadia within the meaning of the Fair and Open Nondiscriminatory Trade Act. The Center is therefore unable

2. The contract is valued at approximately \$10,000 each year.

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to enter into or renew the agreement transmitted to you on March 2.” The Center hired another coffee company for the 2024 conference.

C

Soon after her firing, Torelli filed a complaint with the New Storke Department of Labor alleging that Palmer Coffee had fired her because of her age in violation of the New Storke Antidiscrimination Law (NSAL). The Labor Department forwarded the complaint to the Civil Rights Bureau of the Office of the New Storke Attorney General.

Under the NSAL, employers may not “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, sexual orientation, national origin, or age.” N.S. Gen. Stat. § 848.1(a)(1).

The Attorney General, suing in the name of the State of New Storke, brought an action against Palmer Coffee in the Superior Court of New Storke, seeking civil penalties and Torelli’s reinstatement. Palmer Coffee answered, raising the First Amendment’s ministerial exception as an affirmative defense.

Palmer Coffee also counterclaimed against the State for retaliatory non-renewal, alleging that its boycott of Amcadia is expression protected by the First Amendment and that the State declined to renew the APSCON contract because Palmer Coffee refused to abandon that protected expression.³ The counterclaim challenges FONTA both on its face and as applied to Palmer Coffee, and seeks a declaratory judgment to that effect and an injunction barring the State from applying FONTA to Palmer Coffee in future contracting.⁴

3. Palmer Coffee did not raise any challenges below to FONTA under the Religion Clauses of the First Amendment. It has also not raised any statutory argument that its conduct is not covered by FONTA. Any such contentions are therefore waived.

4. A separate New Storke statute waives the State’s sovereign immunity as to counterclaims seeking injunctive or declaratory relief.

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The parties stipulated to the facts recounted above, and Palmer Coffee moved for summary judgment. The Superior Court granted summary judgment to Palmer Coffee on both claims, holding that the ministerial exception bars the State’s suit and that FONTA is unconstitutional on its face and as applied. The Court of Appeals affirmed. We now consider each issue in turn.

II

We first turn to Palmer Coffee’s affirmative defense: that the State’s age discrimination claim is barred by a doctrine known as the “ministerial exception.” Palmer Coffee asserts that the doctrine, which generally prohibits the government from interfering with a church’s selection of its ministers, protects its selection of Preparers in its coffee shops.

But Palmer Coffee Roasters, a for-profit food-service corporation, is no church, and Torelli is no minister. It therefore cannot shield itself from the employment laws that all other companies in its position are subject to.

A

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.⁵ Together, the Religion Clauses bar the government from meddling in a religious body’s choice of its clergy. “The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 184 (2012).

But who qualifies as a “minister”? For that matter, what makes a particular institution a “church”? These questions are more difficult than they may seem at first glance. We are, as the Supreme Court has observed, a nation of “almost every conceivable religious preference.” *Braunfeld v. Brown*, 366 U.S. 599, 606 (1961)

5. The Fourteenth Amendment applies the Religion Clauses’ guarantees with equal force against the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the right to free exercise into the Fourteenth Amendment); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (incorporating Establishment Clause).

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(plurality opinion). That diversity manifests not only in what different sects believe, but in how they choose to organize themselves. *See Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring) (recognizing the diversity of organizational structure and titles across religions).

Because strictly applying the vocabulary of majority religions—“church,” “minister,” “ordination”—would risk marginalizing minority sects, the Supreme Court has emphasized that there is no “rigid formula” that dictates when the doctrine applies. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2067 (2020). Instead, taking “all relevant circumstances into account,” we ask whether an employee’s position “implicat[es] the fundamental purpose of the exception.” *Ibid.*

Making that determination requires us to answer the two questions we posed above: first, whether Palmer Coffee is a “religious institution,” and second, whether Torelli is a “ministerial employee.” *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 581 (6th Cir. 2018).

We take care at these thresholds because of what lies past them. Once the exception attaches, judicial scrutiny is at an end: a court may not inquire into whether the employer’s religious explanation was pretextual, for the exception “ensures that the authority to select and control who will minister to the faithful ... is the church’s alone.” *Hosanna-Tabor*, 565 U.S. at 194–195; *see also Union Gospel Mission of Yakima Washington v. Brown*, 162 F.4th 1190, 1203 (9th Cir. 2026) (“Once an employment dispute involves an employee who qualifies as a minister, the First Amendment commands courts to abstain.”), *reh’g en banc granted*, 181 F.4th 1331 (9th Cir. 2026).

We are mindful that the ministerial exception is intended for this narrow class of employers and employees, not every case in which a corporation makes an employment decision based on religious beliefs. A defense that extinguishes every discrimination claim of every covered employee must be carefully applied, lest a narrow First Amendment carveout swallow the whole of antidiscrimination law.

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B

The first prong in our analysis asks whether Palmer Coffee is a religious institution for these purposes. We conclude that it is not.

Whether an employer is a “religious institution” admits of no rigid formula either. *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 803 (9th Cir. 2024). The Supreme Court has not provided clear guidance, so we look to the federal courts of appeals for persuasive guideposts. An institution need not be “a church, diocese, or synagogue, or an entity operated by a traditional religious organization,” but it must be “marked by clear or obvious religious characteristics.” *Harris Funeral Homes*, 884 F.3d at 582 (citation omitted).

The employers that have successfully invoked the exception form a telling pattern: a Lutheran congregation’s school (*Hosanna-Tabor*), two Catholic primary schools (*Our Lady*), a nonprofit union of Orthodox congregations operating the nation’s largest kosher-certification program (*Markel*), and a Christian humanitarian ministry (*McMahon v. World Vision, Inc.*, 147 F.4th 959 (9th Cir. 2025)). In other words: churches, church schools, religious nonprofits. So far as this Court can tell, no court has ever held a for-profit commercial retailer to be a religious institution for purposes of the ministerial exception. The Ninth Circuit has even noted that corporate entities “affiliated with a church, but ... not themselves churches” lie “far afield from the paradigmatic application of the ministerial exception.” *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017) (citation modified).

Palmer Coffee thus asks us to boldly go where no court has gone before. But all of its material circumstances point in the same direction: Palmer Coffee is a business which happens to have a religious mission, not a church.⁶

6. Palmer Coffee is not unique in this regard. Many for-profit corporations trace their foundational values and business practices to religious beliefs. *See, e.g., Our Purpose, Chick-fil-A*, <https://www.chick-fil-a.com/careers/culture> [<https://perma.cc/9PU2-H6VY>] (last visited Sept. 4, 2026) (listing Chick-fil-A’s corporate purpose as “glorify[ing] God by being a faithful steward of all that is entrusted to us”); *Our Purpose, Tyson Foods*, <https://www.tysonfoods.com/who-we-are/our-story/purpose-values> [<https://perma.cc/B7FB-4FAU>] (last visited Sept. 4, 2026) (listing “striv[ing] to honor God” as a core value).

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We find the company’s financial structure telling: Palmer Coffee is a for-profit corporation, and nothing in the record indicates that it dedicates a dollar of its earnings to any religious purpose.

That distinction did decisive work in *Markel*. Although the Union of Orthodox Jewish Congregations earned substantial revenue from kosher certification, as a tax-exempt 501(c)(3) nonprofit, “its revenue [did] not benefit any private interest,” its earnings had to “be used for exempt purposes,” and the Union in fact channeled those earnings into religious and educational programming. 124 F.4th at 804 & n.3. Accepting revenue “does not deprive an organization with a religious mission of First Amendment protections,” *id.* at 804, but it stands to reason that the revenue must be used for religious purposes if we are to conclude that an entity is a “religious institution” rather than one organized for the purpose of profit-seeking.

Then, consider what the company does and how it presents itself. Palmer Coffee’s business is the retail sale of coffee to the general public at several locations. *Supra*, at 3. Its religious features, meanwhile, are real but thin: a mission statement dedicated to honoring the religion, homegrown job titles, pamphlets available at the counter. *Supra*, at 3–4. *Harris Funeral Homes* found materially identical trappings insufficient. The funeral home’s mission statement declared that “its highest priority is to honor God in all that we do,” and it placed devotionals where clients “may pick [them] up if they wish.” 884 F.3d at 582. The court held it had “virtually no religious characteristics” of the kind that matter. *Ibid.* The same is true for Palmer Coffee.

And Palmer Coffee’s conduct tells the same story its balance sheet does: it recruits on secular job boards, it hires workers of any faith, and it serves everyone. *Supra*, at 4; *cf. Harris Funeral Homes*, 884 F.3d at 582 (funeral home “employs and serves individuals of all religions”).

Finally, JUSTICE GORBANZO’s reliance on *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), is misplaced. *See post*, at 26–27. *Hobby Lobby* held only that the arts-and-crafts retailer was a “*person*” under the federal Religious Freedom Restoration Act. 42 U.S.C. § 2000bb-1(a) (emphasis added). That conclusion

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rested on an application of the traditional legal fiction that corporations are “persons” for purposes of statutory interpretation. *See Hobby Lobby*, 573 U.S. at 706–709. As the Court explained, because all parties there agreed that some religious nonprofits (namely churches) were persons under RFRA, “[n]o known understanding of the term ‘person’ [could include] *some* but not all corporations.” *Id.* at 708.

That logic does not translate here. If the term “religious institution” included all corporate entities, the term would cease to have any useful meaning. That is the entire point of the ministerial exception—to distinguish the narrow class of entities devoted singularly to the exercise of religion from all other corporations. Applying Palmer Coffee’s interpretation of *Hobby Lobby* would deprive vast swaths of American workers of their civil rights merely because they happen to work for a firm whose owner happens to be religious. We decline Palmer Coffee’s invitation to substitute the whole of American civil rights law with the Law of the Minister.

In every way that counts, Palmer Coffee holds itself out as what it is—a coffee company with a message, not a church with a menu. Shen and his predecessors chose to pursue the Palmers’ mission through a for-profit vehicle competing in the open market. Having taken the benefits of the commercial form, Palmer Coffee cannot also claim the constitutional prerogatives of a church.

C

Even if Palmer Coffee were a religious institution, its affirmative defense would be independently barred because Torelli was not its minister.

To identify a minister for this purpose, *Hosanna-Tabor* considered four circumstances relevant: “the formal title given [to the employee] 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.” 565 U.S. at 192. *Our Lady* instructs that these are guideposts, not gates, and that function matters most. 140 S. Ct. at 2064, 2067. One more principle frames the analysis: because the exception covers only “a subset of a religious organization’s employees,” the position must display “at least some characteristics that distinguish a ‘minister’ from other general employees.” *McMahon*, 147 F.4th at 976–977.

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We begin with the first three of *Hosanna-Tabor*'s factors. We then look to what *Our Lady* called the most important factor: "what an employee does." 140 S. Ct. at 2064.

1

Title. "Preparer" is Palmer Coffee's word for barista, and every barista in the company bears it. Cheryl Perich's title in *Hosanna-Tabor*—"Minister of Religion, Commissioned"—marked "a role distinct from that of most of its members." 565 U.S. at 191. Torelli's marked no distinction at all. A religious-sounding label affixed to ordinary commercial work carries little weight. *Cf. Puri*, 844 F.3d at 1160–1161 (rejecting the exception as applied to employees who carry out all the functions of corporate board members). "Simply giving an employee the title of 'minister' is not enough to justify the exception." *Our Lady*, 140 S. Ct. at 2063.

Substance of the title. Perich completed six years of preparation—eight college-level courses in theology, a synod endorsement, an oral examination, election by the congregation. *Hosanna-Tabor*, 565 U.S. at 191. Torelli completed a six-month barista probation identical for every hire of every faith, capped by a commissioning that Shen performs for every Novice who completes the training. A rite administered to the vast majority of a workforce distinguishes no one.

Holding out. Torelli never held herself out as a Palmer minister or religious leader. She answered a posting on a secular job board and won customers' praise for her palate. Perich, by contrast, accepted a formal call to religious service and claimed a housing allowance available only to those earning compensation in the exercise of the ministry. *Hosanna-Tabor*, 565 U.S. at 191–192. That one customer review described Torelli as "a dedicated Preparer in keeping with Palmer spiritual traditions" shows only that the company's branding worked on customers. *Supra*, at 5. It does not show that the chain, or Torelli, ever held her out as anything but a barista.

2

Finally, function—the consideration that matters most. What Torelli did, day in and day out, was take orders, roast, grind, brew, pour, recommend blends,

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and drive sales. These, of course, are the duties of every barista in New Storke.⁷ Palmer Coffee answers that these acts are sacramental, and that Preparers must also spread the Palmers' word. We accept the company's account of coffee's religious significance without hesitation. But we must still determine "whether each [employee's] particular position implicate[s] the fundamental purpose of the exception." *Our Lady*, 140 S. Ct. at 2067. This one does not, for two reasons.

First, Palmer Coffee's contention would render essentially all of its employees ministers. The obligations to learn the tenets, to spread the word when asked, and to distribute prepared pamphlets bind every customer-facing employee of the corporation. We agree with our colleagues on the Ninth Circuit that such "universal, generic job requirements ... are alone insufficient." *McMahon*, 147 F.4th at 977. Otherwise "every employee of a religious organization would qualify as a minister." *Ibid.* (citation modified). Nothing in this record indicates that Preparers are religiously distinct employees. In fact, they appear to be the rank and file of Palmer Coffee. The exception demands "certain important positions," *Our Lady*, 140 S. Ct. at 2060; Palmer Coffee identifies only a uniform class of Preparers.

Second, Torelli's position bears no resemblance to any the exception has ever covered. The teachers in *Our Lady* were "entrusted most directly with the responsibility of educating their students in the faith," 140 S. Ct. at 2066, the formation of believers being "the very reason for the existence" of religious schools, *id.* at 2055; see also *Hosanna-Tabor*, 565 U.S. at 192 (detailing Perich's similar responsibilities). The mashgiach in *Markel* performed a religious ritual whose validity turned on his own religious standing. Only an observant Orthodox Jew's handling keeps grape products kosher, and Markel had to present rabbinic certification of his observance before he could serve at all. 124 F.4th at 802, 807. The customer service representatives in *McMahon* were the "voice" of a pervasively religious ministry,

7. JUSTICE GORBANZO objects that a Preparer's function is distinctly religious in part because "[o]nly a commissioned Preparer may perform the sacrament unsupervised," while "Novices may not." *Post*, at 28. But here too, the Preparer has much in common with her barista counterparts across the industry. See, e.g., *Careers in Retail, Starbucks*, <https://www.starbucksmycareers.com/en/Retail> [<https://perma.cc/NL26-235H>] (last visited Sept. 11, 2026) ("All of our retail store partners begin their careers with us by undertaking an introductory training programme based upon their role.").

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and their engagement with donors—prayer included—was “a form of ministry itself.” 147 F.4th at 977.

Torelli’s position bears none of those features. She shepherded no flock; she served customers. Her own faith was, by the company’s own design, irrelevant to the sacrament’s validity.⁸ And her audience was not a community of the faithful committed to her care, but whoever walked in wanting coffee.⁹ “The members of a religious group put their faith in the hands of their ministers.” *Hosanna-Tabor*, 565 U.S. at 188. Torelli’s hands held no such responsibility. Handing a pre-printed pamphlet to a curious customer stands closer to the instructor “who merely provides a description of the beliefs and practices of a religion” than to a teacher charged with inculcating them. *Cf. Our Lady*, 140 S. Ct. at 2067 n.26 (suggesting that an instructor in a world-religion class would not qualify for the exception).

Taking all the circumstances together, as we must, Torelli held no “certain important position[]” within a religious institution. She was an exemplary barista at a coffee company that speaks in religious vocabulary. The Constitution does not commit her employment to a legal void.

D

Our holding is narrow. We say only that a for-profit corporation’s retail employees are not ministers of a religious institution. We do not doubt that company leadership sincerely believes otherwise. But sincerity goes to what a religion believes; it cannot enlarge the class of employers and employees to whom the ministerial exception applies. And because the exception, once triggered, forecloses even an inquiry into pretext, *Hosanna-Tabor*, 565 U.S. at 194–195, its thresholds must retain independent bite.

“The interest of society in the enforcement of employment discrimination statutes is undoubtedly important.” *Id.* at 196. When a religious institution’s choice

8. An employee “need not be a ‘co-religionist’” to be a minister, *McMahon*, 147 F.4th at 971, but the fact is surely relevant to the inquiry.

9. Of course, being a for-profit public accommodation, Palmer Coffee would have no legal right to exclude non-believers. *See* 42 U.S.C. § 2000a.

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of its ministers is at stake, the First Amendment strikes the balance against enforcement. When, as here, neither a religious institution nor a minister is involved, there is no constitutional balance to strike, only a statute to apply. The NSAL forbids discharging an employee because of her age. The State may pursue its claim at trial.

III

We turn now to Palmer Coffee’s counterclaim: that New Storke violated the First Amendment when it declined to renew the company’s APSCON contract under the Fair and Open Nondiscriminatory Trade Act.

The First Amendment provides that “Congress shall make no law ... abridging the freedom of speech.” U.S. Const. amend. I.¹⁰ The Amendment forbids a state from conditioning a public contract on the surrender of protected expression, and the withholding of a renewal counts for that purpose as much as an outright termination. *Bd. of Cnty. Comm’rs v. Umbehr*, 518 U.S. 668, 673, 685 (1996).

That framework is not in dispute. The dispute is whether Palmer Coffee’s boycott is protected expression at all.

We take up two questions. First, we decide whether FONTA on its face—that is, irrespective of Palmer Coffee’s specific conduct—impermissibly infringes constitutionally protected expression. Second, even if FONTA is facially valid, we decide whether New Storke’s application of the law in this case unconstitutionally infringes on Palmer Coffee’s protected expression (the as-applied challenge). We answer each in the State’s favor.

A

FONTA forbids public entities to enter into or renew contracts with private companies that “[are] currently participating in a boycott of Amcadia with the intent to boycott Amcadia.” N.S. Gen. Stat. § 245(a). The Act defines that phrase as “taking any action intended to terminate business with, to penalize, to refuse to

10. The Fourteenth Amendment incorporates the Free Speech Clause’s protections against the states. *Stromberg v. California*, 283 U.S. 359, 368 (1931).

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conduct business with, or to limit commercial relations with Amcadia or a person or entity that is engaging in transactions in Amcadia.” *Id.* § 245(b).

We consider two aspects of Palmer Coffee’s facial challenge. We conclude (1) that the Act does not reach protected speech, only purchasing, and (2) that the purchasing it reaches is not itself expressive conduct.

1

Consider first the claim that FONTA cannot operate without an inquiry into speech: The Act’s trigger is the contractor’s “intent to boycott Amcadia,” N.S. Gen. Stat. § 245(a), and intent is not obvious from a purchase order (or lack of one). To find it, the argument goes, the State must read what the contractor has said. By that logic, speech would be FONTA’s very essence.

But FONTA’s terms do not reach speech, only commercial decisions. FONTA’s operative verbs are commercial ones: to “terminate business with,” to “refuse to conduct business with,” to “limit commercial relations with.” Each describes a transaction, or the refusal of one. “Penalize,” standing in that company, carries the same sense—the economic penalty of business withheld. The Act only considers a contractor’s dealings.

FONTA says nothing whatsoever about speech. It does not forbid a contractor to criticize Amcadia, to condemn the treatment of Palmers there, to urge other companies to stop buying, or to denounce FONTA itself. *Cf. Ark. Times LP v. Waldrip*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc) (reaching the same conclusion as to a comparable Arkansas statute, because it did not “ban Arkansas Times from publicly criticizing Israel, or even protesting the statute itself”).

The Supreme Court has drawn the same line. In *FTC v. Superior Court Trial Lawyers Ass’n*, the boycotting lawyers’ efforts “to publicize the boycott, to explain the merits of its cause, and to lobby District officials to enact favorable legislation” were “fully protected by the First Amendment.” 493 U.S. 411, 426 (1990). But their failure to offer their services in the market was still regulable. *See ibid.* Like those lawyers, a contractor under FONTA remains free to speak out as much as it wishes. A rule may reach the refusal to deal and leave the advocacy entirely alone.

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True, the government examines a purpose when it enforces FONTA. But a specific intent requirement is not the proscription of speech. Using speech to prove intent is commonplace in the law. *See, e.g., State v. Plowman*, 838 P.2d 558, 564 (Or. 1992) (“Speech is often used to prove crimes that do not proscribe speech, particularly the intent element of those crimes.”). The State must know whether a bidder’s low price reflects efficiency or collusion, whether a firm’s layoffs reflect a downturn or a plan to punish unionization, and speech may well be probative. That a rule turns on *why a party acted* does not convert the rule into a regulation of *what the party says*.

Consider, for example, antidiscrimination laws. *See, e.g.,* N.S. Gen. Stat. § 848 et seq. (NSAL); 42 U.S.C. § 2000e et seq. (Title VII of the Civil Rights Act). Speech is frequently considered as evidence to decide whether an employer intended to discriminate. *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (plurality opinion) (partners’ stereotyping remarks are probative of discriminatory intent). But speech is not itself regulated under the NSAL or Title VII. Everyone agrees that an employer may—however distastefully—privately express racist or discriminatory views. That is not what the NSAL or Title VII prohibits. Both laws prohibit *action*. They prohibit discriminatory employment *practices*, and no one thinks they violate the First Amendment. That is the case here, too. FONTA prohibits certain commercial *practices* without infringing on any corresponding speech.

And the inclusion of the intent element makes sense. New Storke cannot rationally regulate *all* contractors who fail to purchase from Amcadia, no matter their reason. For some contractors, Amcadia might not sell a needed product. For others, the prices may be too high. New Storke is targeting a *specific* threat to its economy: New Storkers who would otherwise trade with Amcadia using their economic decisions to harm it. Including an intent-to-boycott element is necessary to create a rational scheme. It is not a punishment of speech.

FONTA therefore does not by its terms regulate speech.

2

Given that FONTA reaches only purchasing, we next consider whether that purchasing is itself expressive—that a boycott, by its nature, is speech, so that a statute confined to commercial refusals still regulates protected expression.

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Conduct does not become protected expression “whenever the person engaging in the conduct intends thereby to express an idea.” *United States v. O’Brien*, 391 U.S. 367, 376 (1968). The First Amendment applies “only to conduct that is *inherently* expressive.” *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47, 66 (2006) (emphasis added). The law schools in *FAIR* meant to express a great deal by excluding military recruiters, and the Court held their conduct unprotected all the same, because “[a]n observer ... has no way of knowing whether the law school is expressing its disapproval of the military, all the law school’s interview rooms are full, or the military recruiters decided ... that they would rather interview someplace else.” *Ibid.*

A commercial decision not to stock a nation’s goods, standing by itself, is no more legible. It is equally consistent with changes in price, supply, taste, a distributor’s failure, or mere indifference. What it means depends on what the buyer says about it, and the Act leaves the buyer free to say whatever he likes.

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982), does not hold otherwise. *Claiborne* held that the NAACP’s expressive conduct *in connection with* its failure to patronize White-owned businesses was protected. It did not hold that every refusal to purchase is speech. As the Eighth Circuit put it, “*Claiborne* only discussed protecting expressive activities *accompanying* a boycott, rather than the purchasing decisions at the heart of a boycott.” *Ark. Times*, 37 F.4th at 1392.

Indeed, *Claiborne* shows that *some* boycotts can be sufficiently expressive to warrant First Amendment protection. But, as *Trial Lawyers* and *FAIR* demonstrate, not all boycotts warrant free-speech protections. *Claiborne* concerned a years-long boycott in Mississippi intended to bring about significant political change on race- and civil rights-related issues. 458 U.S. at 889.

Unlike the politically charged boycott in Mississippi, failure to purchase from Amcadia does not inherently communicate a message. We therefore join the only federal court of appeals to consider a similar law. *See Ark. Times*, 37 F.4th 1386. While we recognize that some federal district courts have reached contrary conclusions, *see, e.g., Amawi v. Pflugerville Indep. Sch. Dist.*, 373 F. Supp. 3d 717 (W.D. Tex. 2019), *vacated as moot sub nom. Amawi v. Paxton*, 956 F.3d 816 (5th Cir. 2020), they make the same unpersuasive arguments that we reject above.

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We therefore hold that FONTA does not, on its face, reach expressive conduct.

B

We turn now to the application of FONTA to Palmer Coffee. Two questions arise: (1) whether Palmer Coffee’s boycott is expressive conduct, and, if it is, (2) whether FONTA may nonetheless be applied to it. We answer both questions again in the State’s favor.

1

Conduct falls within the First Amendment’s protection when an “intent to convey a particularized message was present, and ... the likelihood was great that the message would be understood by those who viewed it.” *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *Spence v. Washington*, 418 U.S. 405, 410–411 (1974)).

Intent is not seriously contested here, and we do not question the company’s assertion that it intended to convey a message.

Understanding presents the harder question. Ask a customer at a Palmer Coffee counter what the company’s purchasing decision means, and the customer will answer correctly. But ask *how* the customer knows, and the answer is not the shelves. The customer knows because Shen erected signs reading “We proudly do not sell coffee from the evil, fascist, and disgusting Amcadia,” and because Shen explained himself on the company website. *Supra*, at 7. Remove the signs and website, and what remains is an empty section beneath an “Amcadian Coffee” placard. Empty shelves do not talk, and all they inherently signify is that there is no Amcadian coffee here today.

That the message travels on the speech rather than the conduct is fatal. “The fact that such explanatory speech is necessary is strong evidence that the conduct at issue ... is not so inherently expressive that it warrants protection under *O’Brien*.” *FAIR*, 547 U.S. at 66. The signs and the posts are not evidence that the boycott speaks. They are evidence that it does not.

What Palmer Coffee actually did, then, divides in a way the First Amendment recognizes. The signs and the posts are speech, fully protected, and FONTA

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does not touch them. The decision to stop buying is conduct, and FONTA reaches it.

2

Even if we concluded otherwise, the result would not change, because FONTA would satisfy the standard that governs regulations of expressive conduct.

A regulation of expressive conduct is judged under “*O’Brien*’s relatively lenient standard” if it is not “related to the suppression of free expression.” *Johnson*, 491 U.S. at 403, 407. If it is related to expression, “then we are outside of *O’Brien*’s test,” and a “more demanding standard” controls. *Id.* at 403.

FONTA’s aim is unrelated to free expression. Its concern is the commercial relationship itself—the uninterrupted supply of imports from a key trading partner. That interest is the same whether a contractor announces its boycott from every window or conducts it in perfect silence, and it is not implicated at all by a contractor who denounces Amcadia daily while continuing to buy. The State’s concern attaches to what the withdrawal of commerce does, not to what it says.

Under *O’Brien*’s criteria, FONTA easily survives. A State has the constitutional power to set the terms on which it contracts, its interest is substantial, and the burden on expression is no greater than necessary. *See O’Brien*, 391 U.S. at 377 (listing the relevant criteria). A company that declines to contract remains free to boycott, to explain the boycott, to organize others, and to campaign for the Act’s repeal.

* * *

Palmer Coffee is a coffee company, not a church, and its purchasing decisions are commerce, not speech. The First Amendment does not shield it from the ordinary operation of New Storke law.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORBANZO, dissenting:

Today, the majority declares that Palmer Coffee Roasters, an organization that is run by a faith’s prophet and spends all day performing the faith’s sacraments, does not merit the First Amendment’s protection. It goes on to declare that Palmer Coffee cannot use a boycott to protest a nation that oppresses its adherents. Because I would not deprive Palmer Coffee of its religious and political rights so readily, I respectfully dissent.

I

Marisol Torelli was dismissed for a reason of religious doctrine, by the living prophet of a religious faith, from an office that faith has commissioned since 1918, in an institution whose charter declares that its primary mission is to spread that faith and administer its sacrament.

The Court nonetheless holds that the First Amendment has nothing to say about this suit, because the institution takes a form the Court finds insufficiently churchlike, and because the position strikes the Court as too much like ordinary work. Each conclusion rests on the same mistake: measuring an unfamiliar faith against the templates of familiar ones. The Supreme Court of the United States has repeatedly warned against that way of proceeding. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020) (courts must not “risk privileging religious traditions with formal organizational structures over those that are less formal”); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 198 (2012) (Alito, J., concurring) (“the term ‘minister’ or the concept of ordination” must not dominate the ministerial analysis).

A

Begin with the common ground. I accept the framework the Court adopts: to prevail, “the employer must be a religious institution and the employee must have been a ministerial employee.” *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 581 (6th Cir. 2018). And I agree—indeed, I would underscore—that where the exception applies, it applies absolutely. *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 803 (9th Cir. 2024). My disagreement is not with the Court’s articulation of the test but rather with its application.

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1

Consider first what the record shows about Palmer Coffee. The company was founded by Lewis Palmer—the original prophet of the Palmer faith—for the stated purpose of expanding the Palmers’ reach. Its primary purpose is “to spread the word of the Palmers and to bring the Holy Sacrament of Caffeine to all.” *Ante*, at 3. Its staff structure is ecclesiastical—Novices, Preparers, Overseers—and its baristas are commissioned by the prophet’s own hand after mandatory religious instruction. *Ibid.* Company policy directs every Preparer to place proselytization above every commercial task on the floor. *Ante*, at 4. If these are not “clear or obvious religious characteristics,” *Harris Funeral Homes*, 884 F.3d at 582, the phrase has lost its meaning.

Perhaps the majority fails to recognize Palmer Coffee as a religious institution because it lacks the trappings of more familiar religions. True enough, the Palmers do not gather in pews to hear sermons. They do not sing in choirs. They do not even build soaring cathedrals to honor their god.

Needless to say, none of these practices are the measure of a religion. Religious institutions, whatever their particular form, must be judged by what they mean to their adherents, not what they mean to us. *Cf. Our Lady*, 140 S. Ct. at 2063–2066 (recognizing that religious institutions structure ministry and training in widely varying ways).

Despite that basic principle—and despite the Supreme Court’s repeated reminders—the majority embarks on a campaign of line-drawing between conduct it considers sufficiently religious and not. *Ante*, at 16 (citing *Markel*, 124 F.4th at 807). Sermons are in; selling coffee is out. Kosher food certification is in; preaching the divine virtues of caffeine is out.

Most problematic is the majority’s false dichotomy between a retailer and a religious institution. *See, e.g., ante*, at 14 (“In every way that counts, Palmer Coffee holds itself out as what it is—a coffee company with a message, not a church with a menu.”). Nothing in First Amendment doctrine says one cannot be both.

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True, Palmer Coffee resembles a secular coffee chain in many respects. So what? Consider the unquestionably Christian mission in *Union Gospel Mission of Yakima Washington v. Brown*, 162 F.4th 1190 (9th Cir. 2026), *reh'g en banc granted*, 181 F.4th 1331 (9th Cir. 2026). Union Gospel “operate[d] a homeless shelter, faith-based recovery programs, health clinics, and meal services,” provided in one year “30,167 nights of shelter to adults and children, gave out 141,629 free meals, and helped dozens regain sobriety.” *Id.* at 1198. Is Union Gospel any less religious because there exist secular counterparts? See, e.g., *The Midnight Mission*, <https://www.midnightmission.org> [<https://perma.cc/JSS5-6FJ6>] (last visited Aug. 24, 2026) (“homeless shelter and recovery center” that provides “housing, recovery services, education, and workforce development,” and reports “929,945+ Meals Served”).

A religious institution does not lose its religious character merely because it shares certain activities with familiar secular organizations. A court that accepts, as the majority says it does, that a cup of coffee carries sacred meaning cannot then treat the sale of that cup as proof of secularity.

2

Nor does the Palmer faith’s preferred corporate structure undermine its religious character. “The act of profiting, or competing with for-profit companies ... does not inherently make an organization non-religious for purposes of the ministerial exception,” and “[t]he acceptance of revenue does not deprive an organization with a religious mission of First Amendment protections.” *Markel*, 124 F.4th at 803–804. And Palmer Coffee is not merely a corporation “affiliated with a church.” *Contra ante*, at 12 (quoting *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017)). It *is* the church, so far as the Palmer faith recognizes such a concept. It is directly run by the faith’s living prophet and divine leader, as it has been for four generations. Making money does not nullify a religious institution’s religious character. The fact that familiar organized religions tend to be nonprofits cannot justify imposing a non-profit requirement on minority religions.

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014), further supports the point. Though a statutory case, it rests on an observation about religion rather than

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about statutes. “A corporation is simply a form of organization used by human beings to achieve desired ends,” and protecting the religious exercise of corporations “protects the religious liberty of the humans who own and control those companies.” *Id.* at 706–707. Hobby Lobby’s for-profit status did not threaten its statutory protection under the Religious Freedom Restoration Act. Nothing changes in the First Amendment context. Palmer Coffee is an enterprise founded by a faith’s prophet, staffed through his personal commissioning, and devoted to administering the faith’s sacrament to as many souls as possible. As in *Hobby Lobby*, Palmer Coffee’s corporate form does not change its religious nature.

The line the Court draws today will burden precisely the faiths least able to bear it. Established denominations come to court with steeples, seminaries, and 501(c)(3) determination letters. A young minority religion whose sacrament is bought and sold in the marketplace must, of necessity, take the marketplace’s form. Under the majority’s rule, the accident that a faith’s central rite involves a commodity in commerce strips its institutions of a protection that more mainstream faiths enjoy as of right. The Religion Clauses do not tolerate that result.

B

The majority’s analysis of Torelli’s ministerial status fares no better. “What matters, at bottom, is what an employee does.” *Our Lady*, 140 S. Ct. at 2064. What a Preparer does is perform the Palmers’ central sacrament and spread the Palmer faith—the latter under a standing policy that elevates evangelism “over all other duties (such as taking orders, cleaning, or grinding coffee).” *Ante*, at 4. An employee whose first duty on the job is the propagation of the faith performs “vital religious duties” under any honest application of that standard. *Our Lady*, 140 S. Ct. at 2066.

1

Though *Our Lady* instructs that the factors outlined in *Hosanna-Tabor* are part of a holistic analysis, 140 S. Ct. at 2067, the majority considers them one by one. Even taking the majority on its own terms, fairly weighed, the factors cut in the opposite direction.

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Title. “Preparer” is an office of the Palmer faith, created when Lewis Palmer “personally commissioned his earliest followers as Preparers” a century ago, and conferred today by the prophet himself—who, the majority tells us, “takes great care to ensure only trusted people work as Preparers,” interviewing many candidates personally. *Ante*, at 2, 4.

Substance of the title. Six months of supervised religious training, undertaken “to ensure the religious procedure was performed correctly,” followed by commissioning at the prophet’s hand. *Ante*, at 4. That is less schooling than Cheryl Perich received; it is considerably more religious formation than the *Our Lady* teachers received, and the Supreme Court reversed the Ninth Circuit for assigning “too much weight” to just that deficit. 140 S. Ct. at 2067. “[R]eligious traditions may differ in the degree of formal religious training thought to be needed”; the judgment is the faith’s to make, not ours. *Id.* at 2064; *see also Behrend v. S.F. Zen Ctr., Inc.*, 108 F.4th 765, 770 (9th Cir. 2024) (recognizing that even positions “not as familiar to many” are “no less protected”).

Holding out. Torelli held herself out as a Preparer—a commissioned religious official capable of administering the sacrament. The majority inexplicably asserts that Torelli “never held herself out as a Palmer minister or religious leader.” *Ante*, at 15. The first charge simply begs the question, and the second ignores what the Ninth Circuit has already recognized: “Both our precedent and that of the Supreme Court proscribe a rule by which only those who are high up in a religious organization can qualify as ministers.” *Behrend*, 108 F.4th at 770. Nor does the fact that Torelli is Catholic, *ante*, at 4, affect how she held herself out. *See McMahon v. World Vision, Inc.*, 147 F.4th 959, 971 (9th Cir. 2025) (“The employee need not be a ‘co-religionist,’ a practicing member of the religion with which the employer is associated, for the ministerial exception to apply.”) (citing *Our Lady*, 140 S. Ct. at 2068–2069). She was a Preparer, no different from the Preparers who happened to be practicing Palmers.

Function. Only a commissioned Preparer may perform the sacrament unsupervised—Novices may not—and every Preparer stands under orders to spread the word. The courts of appeals have held far humbler tasks ministerial when the faith invested them with meaning. A customer service representative “interfacing

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with donors and soliciting donations” was ministerial because the institution viewed it “as a form of ministry or religious practice.” *McMahon*, 147 F.4th at 974. A kosher supervisor’s inspection of grape products was ministerial because his faith made his supervision the guarantee of the food’s religious fitness. *Markel*, 124 F.4th at 806–808. What the majority says today of coffee it would not dream of saying of kosher wine. If supervising the sacramental fitness of grape juice is ministry, preparing the sacrament itself surely is.

2

The majority offers two reasons for its contrary conclusion. Neither withstands scrutiny.

First, universality. The majority observes that every Preparer bears the same religious duties and concludes that none is distinguished by them. But *McMahon*’s universal-requirements principle addressed background obligations—attending chapel, praying with colleagues, living by the employer’s values. 147 F.4th at 977. A Preparer’s sacramental function is not background piety; it is the job itself, and it does distinguish. Novices may not perform the rite unsupervised, and the company’s back-office staff are not commissioned at all. What actually troubles the majority is arithmetic—that the ministers would outnumber the laity on Palmer Coffee’s payroll. Yet the Supreme Court has acknowledged that some faiths “consider the ministry to consist of all or a very large percentage of their members.” *Our Lady*, 140 S. Ct. at 2063 (quoting *Hosanna-Tabor*, 565 U.S. at 202 (Alito, J., concurring)). An institution whose whole purpose is administering a sacrament will naturally be staffed by those who administer it. The exception’s logic does not compel a faith to invent non-ministers it does not have.

Second, the majority reasons that because Palmer Coffee hires Preparers of any faith, the position cannot be a post of religious trust. The Supreme Court has foreclosed the premise. Respondents in *Our Lady* “[went] further astray in suggesting that an employee can never come within the *Hosanna-Tabor* exception unless the employee is a ‘practicing’ member of the religion,” for “[d]eciding such questions would risk judicial entanglement in religious issues.” 140 S. Ct. at 2068. The majority repackages the forbidden requirement as “surely relevant,” *ante*, at 17 n.8, but the entanglement is the same: a civil court grading how much a church ought to

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care about its functionaries' private beliefs.¹¹ The Palmers have made a religious judgment that their rituals, correctly performed by properly trained Preparers, sanctify the cup, whatever the Preparer privately believes. That judgment is theirs to make.

C

No one can read this record without sympathy for Torelli: more than a decade of exemplary service, ended on her birthday by a doctrine she does not subscribe to. But *Hosanna-Tabor* was no less sympathetic a case—a teacher returning from disability leave, dismissed after she asserted her legal rights—and a unanimous Supreme Court nonetheless held her suit barred, for “[w]hen a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us.” 565 U.S. at 196. The balance is no different because the house of worship appears too secular to the majority’s sensibilities.

The Palmers are a small faith with an unfamiliar sacrament, born in a coffeehouse and practiced across a counter. Their worship, the majority says, does not fit the mold. But the First Amendment was written for people like them—to guarantee that the freedom of worship would never be confined to what polite society considered normal or respectable.

In denying the Palmers a fundamental measure of religious respect, the majority betrays that promise.

II

I turn now to the majority’s FONTA holding.

New Storke is a friend of Amcadia. So says the Governor, and so says a majority of both houses of the legislature. When New Storkers began boycotting Amcadian goods, one legislator called them “un-American” and proposed a remedy:

11. It is not even clear from the record before us that Palmer theology treats other traditions such as Catholicism as conflicting with its tenets. In any event, I would hope this Court has enough respect for the Palmer faith (or at least enough self-respect) not to answer that question on its own.

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any company that stops buying from Amcadia in protest would lose the right to do business with the State. The legislature obliged. *See ante*, at 7–8.

Palmer Coffee is such a company. It stopped buying Amcadian coffee beans days after mobs in that country began beating Palmers, burning their homes, and killing them while the police looked the other way. It posted a sign in every shop explaining that decision, beside the empty shelf where Amcadian coffee had previously sat. *See ante*, at 6–7.

Then an anonymous activist posted a photograph of the sign on social media and asked the Governor whether this was the kind of company that New Storke did business with. The Governor replied, “Looking into it.” One day later, the State cut Palmer Coffee off. *See ante*, at 8.

The majority dutifully recounts this sequence of events and then proceeds to find no First Amendment fault with it. I am astonished by that conclusion. No system of ordered liberty can allow the government to single out its political opponents for punishment because it thinks their beliefs “un-American.”

FONTA, in its conception and application, is an abuse of state power. More than four decades ago, the Supreme Court recognized that politically motivated boycotts are protected by the First Amendment. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). Rightfully so: the use of boycotts to achieve political ends is as old as the American political tradition itself. *See* Lawrence B. Glickman, *Buying Power: A History of Consumer Activism in America* 31–151 (2009) (tracing the history of American consumer boycotts beginning with colonial resistance to British rule).

Because FONTA targets expression of a particular viewpoint, I would hold it unconstitutional on its face. And even if the statute did not directly target speech, it could not be validly applied to Palmer Coffee, whose political expression is inextricable from its boycott.

A

The majority and I agree on the framework. Under *Texas v. Johnson*, 491 U.S. 397 (1989), a court asks three questions in order: (1) whether the conduct a law reaches is expressive; (2) if so, whether the law is “related to the suppression of

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free expression”; and (3) if so, whether the State can justify it under exacting scrutiny. *Id.* at 403. On a facial challenge, the first question concerns the scope of the statute in the abstract, not Palmer Coffee’s shelves in particular.

The majority says that FONTA reaches only purchasing, and that purchasing is not expressive. *Ante*, at 20. That is wrong. FONTA regulates a boycott for what it says, and only when it says something the State disapproves of.

1

Conduct is protected by the First Amendment when “[a]n intent to convey a particularized message was present, and ... the likelihood was great that the message would be understood by those who viewed it.” *Johnson*, 491 U.S. at 404 (quoting *Spence v. Washington*, 418 U.S. 405, 410–411 (1974)). Whether a message will be understood depends on “the context in which it occurred.” *Id.* at 405.

Claiborne applied that principle to a boycott. The Black citizens of Port Gibson, Mississippi, stopped patronizing White-owned businesses to press for an end to segregation. 458 U.S. at 889–890. Though the Court recognized that states generally have the right to “regulate economic activity,” it nonetheless held that they could not “justify a complete prohibition against a nonviolent, politically motivated boycott.” *Id.* at 914.

The majority offers a menu of alternatives to would-be boycotters: that they instead “criticize Amcadia,” “condemn the treatment of Palmers there,” “urge other companies to stop buying,” or even “denounce FONTA itself.” *Ante*, at 19. While it is gracious of the majority to list some First Amendment freedoms it is not hostile toward, *Claiborne* squarely rejects its cramped notion of protected expression. The *Claiborne* boycotters gave speeches criticizing discrimination, picketed White-owned businesses, and denounced the officials who enforced segregation. The *Claiborne* Court could easily have drawn the line there. But it went further, and found that a boycott waged for “political, social, and economic change,” 458 U.S. at 911, deserved as much First Amendment protection as any speech or picket line.

The majority’s principal response to *Claiborne* is *FTC v. Superior Court Trial Lawyers Ass’n*, 493 U.S. 411 (1990), in which court-appointed defense lawyers colluded to stop taking cases until the District of Columbia raised their fees. The

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Supreme Court held their conduct was not protected by the First Amendment, explaining that their “undenied objective was an economic advantage for those who agreed to participate.” *Id.* at 427.

Trial Lawyers, in other words, stands for the proposition that the government may regulate economic actors who take economic action for economic gain. FONTA, by contrast, regulates *political* actors for conduct they undertake for *political* reasons. *Trial Lawyers* turned on exactly this distinction: whereas the lawyers were engaged in quintessential economic collusion, the protestors in *Claiborne* “sought no special advantage for themselves.” 493 U.S. at 426.

The same is true here. The State is not worried that its contractors will collude for their own benefit; FONTA has no element of agreement, no element of market power, and no requirement that the boycotter gain anything. What the State is worried about is that its contractors will act on their political beliefs. That is why the Act reaches a refusal to deal only when it is made “with the intent to boycott Amcadia.” N.S. Gen. Stat. § 245(a).

Now, as the majority points out, using a person’s speech to determine their intent does not necessarily offend the First Amendment. *See ante*, at 20. For instance, a law may punish a threat made with the intent to extort, or a firing made because of a worker’s race. In each case, the defendant’s words may prove intent, but the act itself—extortion, discrimination against a person—is one the State may properly forbid. FONTA punishes a different act: protesting a government by refusing to trade with it. The State may not make that an offense, because the Supreme Court has held that kind of conduct protected. *Claiborne*, 458 U.S. at 914.

2

And FONTA is not simply a blanket ban on boycotting foreign governments. New Storke’s contractors may boycott any nation on earth, for any reason, *except for Amcadia*. The statute’s application thus turns on what the boycott is about, and a law of that kind is “related to the suppression of free expression.” *Johnson*, 491 U.S. at 411 (Texas’s flag statute applied only where the conduct would offend, so its violation “depended on the likely communicative impact” of the conduct). Such a law must survive “the most exacting scrutiny.” *Id.* at 412.

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But FONTA is worse than that. It regulates boycotts not only because of what they express, but because of what side they are on. A company that boycotts Amcadia to oppose its government loses its contracts; a company that boycotts other nations in solidarity with Amcadia keeps its contracts. Taking sides in this way is what First Amendment doctrine knows as “viewpoint discrimination,” and it is the most problematic kind of speech regulation. “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Johnson*, 491 U.S. at 414.

The Act’s text plainly discriminates by viewpoint. The circumstances of its enactment confirm that reading. Boycotts of Amcadian goods spread through New Storke after the 2022 attacks. The chair of the legislature’s Amcadia caucus responded that “to be anti-Amcadia is un-American” and that the State could not “let this get out of hand.” *Ante*, at 7. In the next session she introduced FONTA. *Ibid*. The Supreme Court has cautioned against striking down “an otherwise constitutional statute on the basis of an alleged illicit legislative motive,” *United States v. O’Brien*, 391 U.S. 367, 383 (1968), but FONTA is not otherwise constitutional. Its text singles out one side of a public controversy, and its history simply confirms what the statute already shows.

All that remains, then, is applying the “exacting scrutiny” of the government’s interests required by *Johnson*. 491 U.S. at 412. The State says that FONTA is intended to protect its economy, not to punish a view. Amcadia is New Storke’s largest trading partner, and a boycott of Amcadia that spread widely enough would injure Amcadia’s economy and New Storke’s with it. I take that interest seriously. But *Claiborne* considered the same interest and rejected it: the Port Gibson boycott caused its targets real economic loss, and the Court held that the State could not impose liability for “the consequences of nonviolent, protected activity.” 458 U.S. at 918.

And if the State’s concern is its trading relationship, it has every ordinary tool of trade policy at hand. It may promote Amcadian goods, subsidize their import, or buy them itself. What it may not do is preserve its relationship with Amcadia by punishing New Storkers who hold a different view of that country. “The

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way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong." *Johnson*, 491 U.S. at 419.

FONTA cannot survive exacting scrutiny. I would hold it invalid on its face.

B

1

Because the Court upholds FONTA on its face, it next reaches Palmer Coffee's as-applied challenge, which asks whether the State's application of FONTA infringes on Palmer Coffee's expressive rights, even if the law is generally valid. The majority answers no, because in its view Palmer Coffee's empty shelves "do not talk"; only its signs do. *Ante*, at 22. I disagree.

As the majority concedes, Palmer Coffee intended to send a message of disapproval of Amcadia and its policies toward Palmers. *Ibid.* It disputes only the second element of the *Johnson* analysis: whether "the likelihood was great that the message would be understood by those who viewed it." *Johnson*, 491 U.S. at 404.

Whether a message will be understood depends on "the context in which it occurred," *id.* at 405, and the context here would not be difficult for a third-party observer to apprehend. Palmer Coffee cleared Amcadian beans from its shelves days after mobs in Amcadia began attacking Palmers, in a State that is home to 60,000 of them, while the attacks were a fixture of the local news and other New Storke businesses were dropping Amcadian goods. *Ante*, at 6. The company that did so is run by the Palmers' prophet. And it did not simply stop stocking a product; it kept the section in place, rows of empty shelves beneath a sign reading "Amcadian Coffee." *Ante*, at 6-7. The Supreme Court thought it significant in *Spence* that the flag display was "roughly simultaneous with and concededly triggered by" the events it protested. 418 U.S. at 410. That temporal overlap is present here as well.

The majority retorts that a customer knows what the shelves mean only because of the signs beside them, and that the need for such explanatory speech is "strong evidence" that the conduct itself is not expressive. *Ante*, at 22 (quoting

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Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR), 547 U.S. 47, 66 (2006)). That overreads *FAIR* dramatically.

FAIR held that a law school’s exclusion of military recruiters was not inherently expressive because an observer would have “no way of knowing” whether the school was expressing disapproval of the military or simply had no interview rooms free. 547 U.S. at 66. The Court added that the law schools’ expression was “not created by the conduct itself but by the speech that accompanies it.” *Ibid.* The majority interprets this reasoning to mean that any conduct clarified by explanatory speech is not expressive on its own. *Ante*, at 22.

But if that were the rule, *Johnson* would have come out the other way: Johnson burned the flag at the end of a demonstration, while the crowd around him chanted, and the Court found the political character of his act “overwhelmingly apparent” for that reason. 491 U.S. at 406. So would *Claiborne*, whose boycotters gave speeches, marched, and picketed throughout. 458 U.S. at 907–908. No one in Montgomery in 1956 mistook the significance of an empty bus because buses were sometimes empty for other reasons. And no one in New Storke in 2024 missed the meaning of an empty shelf marked “Amcadian Coffee.”

What remains of the majority’s argument is little more than a strained thought experiment: remove the signs and the website, and what is left is mute. But for the reasons stated, even the empty shelf is expressive. Beyond that, the sign and the shelf were one display, put up together and for the same reason. A court cannot decide whether conduct is expressive by first stripping away the context that makes it so.

2

The Court holds in the alternative that FONTA would satisfy *O’Brien*’s balancing test even if the boycott were expressive, because the State’s interest in trade with Amcadia is “unrelated to free expression.” *Ante*, at 23. I have already explained why that is wrong. *Supra*, at 34–35. But the State would fail even *O’Brien*’s more lenient test, because that test still requires that the regulation “further[]” the asserted interest. 391 U.S. at 377. Nothing in this record suggests that one coffee chain’s purchasing is likely to have meaningful consequences for the New Storke–Amcadia trading relationship. Nor is there any suggestion that Palmer

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Coffee's boycott of Amcadian coffee would somehow affect its work as an AP-SCON vendor. At bottom, FONTA is not the benign economic policy that the majority would like it to be. It is exactly what its text, operation, and legislative history suggest that it is: an attempt to stamp out anti-Amcadian activities that the government considers distasteful.

That leaves the suggestion that FONTA takes nothing from Palmer Coffee, since a company that forgoes the State's business "remains free to boycott." *Ante*, at 23. But that is no choice at all, or at least not one the First Amendment allows the State to force on its contractors. *See Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 685 (1996) (holding that the government may not terminate a contractor's at-will contract in retaliation for the contractor's protected speech).

* * *

The majority says that one of the nation's oldest forms of political protest is nothing more than "ordinary commerce." *Ante*, at 2. That would be news to the colonists who would not import British cloth;¹² to the abolitionists who would not buy slave-grown sugar;¹³ to the Jewish Americans who would not buy German goods in 1933;¹⁴ and to the citizens of Montgomery who walked to work for a year.¹⁵ And it would be news to the Supreme Court, which recognized the right of Black Americans in Port Gibson, Mississippi, to resist injustice through boycotts.

According to the majority, Palmer Coffee is neither religious enough to claim the Religion Clauses nor expressive enough to claim the Free Speech Clause. Thankfully, the First Amendment does not grade on that curve. It protects the unfamiliar church and the unfamiliar protest for the same reason it protects the familiar ones, and it does so whether or not the State finds them respectable.

I respectfully dissent.

12. Glickman, *supra*, at 35–39, 44.

13. *Id.* at 74, 79.

14. *Id.* at 225.

15. *Id.* at 267.

Appendix A

New Storke Antidiscrimination Law

§ 848

For the purposes of this subchapter—

- (a) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person.
- (b) The term “employee” means an individual employed by an employer.

...

§ 848.1

(a) Employer practices

It shall be an unlawful employment practice for an employer—

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, sexual orientation, national origin, or age; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, sexual orientation, national origin, or age.

...

(m) Impermissible consideration of race, color, religion, sex, sexual orientation, national origin, or age in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, sexual orientation, national origin, or age was a motivating factor for any employment practice, even though other factors also motivated the practice.

Appendix B

Fair and Open Nondiscriminatory Trade Act

§ 245

- (a) Except as provided under subsection (c) of this section, a public entity shall not enter into or renew a contract with a company to acquire or dispose of services, supplies, information technology, or construction if the company is currently participating in a boycott of Amcadia with the intent to boycott Amcadia.
- (b) A boycott of Amcadia is defined as taking any action intended to terminate business with, to penalize, to refuse to conduct business with, or to limit commercial relations with Amcadia or a person or entity that is engaging in transactions in Amcadia.
- (c) This section does not apply to contracts with a total potential value of less than one thousand dollars (\$1,000).

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