No. 24-781

IN THE

Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Petitioner,
v.
MATTHEW J. PLATKIN,
ATTORNEY GENERAL OF NEW JERSEY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; THE NATIONAL ASSOCIATION OF EVANGELICALS; THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE LUTHERAN CHURCH–MISSOURI SYNOD; THE ANGLICAN CHURCH IN NORTH AMERICA; THE JURISDICTION OF THE ARMED FORCES AND CHAPLAINCY OF THE ANGLICAN CHURCH IN NORTH AMERICA; THE ASSEMBLY OF CANONICAL ORTHODOX BISHOPS OF THE UNITED STATES OF AMERICA; THE CHAPLAIN ALLIANCE FOR RELIGIOUS LIBERTY; AND THE JEWISH COALITION FOR RELIGIOUS LIBERTY AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

Amici are religious organizations with a shared commitment to defending religious freedom under the Constitution. Intrusive investigative demands such as the one in this case threaten *amici*'s First Amendment rights to decide matters of faith, doctrine, and church government free from state interference and to pursue their religious missions. Investigative demands often reflect local political pressures or prejudice against the target of the investigation. Access to a federal forum is vital so that religious organizations can vindicate their federal rights, including the principle of religious autonomy.

SUMMARY OF ARGUMENT

Religious organizations regularly face intrusive demands for information about their internal management decisions from state and local officials. Such demands raise profound constitutional questions about such organizations' First Amendment rights and the degree to which the government can intrude into their internal operations. Religious people and institutions need access to an impartial forum to vindicate their federal rights—including their rights under the Constitution. Otherwise, they may be exposed to local prejudice without a reliable means of recourse.

Three points underscore the urgent need for a federal forum here and in similar cases.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

First, forcing religious organizations to disclose their internal religious activities can violate their constitutionally protected autonomy and distort their exercise of religion. Religious leaders and members alike will be more reluctant to engage in the frank dialogue necessary to work out sensitive matters of religious doctrine, polity, policy, and discipline. Worse, the faith community may feel pressure to shape and apply religious doctrine to avoid litigation and government investigation—rather than as a free process of forming and modifying the faith community's religious identity. Compelled disclosure of internal religious activities also risks undue government entanglement. It typically is only one step in a lengthier government monitoring process, which often fuels illicit efforts to second-guess a religious organization's sincere beliefs and practices.

Second, probing religious organizations' internal operations chills the exercise of First Amendment rights. It can inhibit the candor necessary for effective religious association. It can also impede the organization's ability to gather as a united body to advance its religious mission. Government intrusion likewise can pressure the organization to alter or suppress certain doctrines or practices and can divert resources the organization would otherwise use to worship, teach, minister, and practice its religion.

Third, religious groups need an impartial federal forum to vindicate their federal rights. The Founders authorized the creation of inferior federal courts in part to counteract local bias. 42 U.S.C. § 1983 is a crucial tool for those injured by unconstitutional state or local government action to obtain relief. Experience, moreover, has shown that religious groups often face local prejudice or insensitivity toward their sincerely

held beliefs and practices. Without access to a federal forum, the promise of religious liberty would remain uncertain—even hollow.

ARGUMENT

I. COMPELLING RELIGIOUS ORGANIZATIONS TO DISCLOSE THEIR INTERNAL ACTIVITIES THREATENS THEIR CONSTITUTIONALLY PROTECTED AUTONOMY.

The First Amendment secures the right of religious organizations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 737 (2020) (quoting *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). This principle, known as the church autonomy doctrine, guarantees religious entities "autonomy with respect to internal management decisions that are essential to the institution's central mission." *Id.* at 746. Subjects covered by the church autonomy doctrine include: (1) the development, teaching, and interpretation of religious doctrine, see *Kedroff*, 344 U.S. at 116; (2) a faith community's form of church government, see *Serbian E. Orthodox Diocese for the U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 710 (1976); (3) the appointment and removal of clergy and other employees who perform religious functions, see *Our Lady of Guadalupe*, 591 U.S. at 747; and (4) decisions regarding church membership, see *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 730 (1872).

The church autonomy doctrine reflects the combined force of both Religion Clauses of the First Amendment. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 182–85 (2012) (recounting

the historical background of the Religion Clauses). The Establishment Clause prohibits the government from telling a church how to govern itself in ecclesiastical matters. See *id.* at 184. And the Free Exercise Clause prohibits the government from thwarting the church's free choice in such matters. See *ibid.* When directed at religious institutions, intrusive investigative demands implicate both constitutional concerns.

A. Ordering the Disclosure of Internal Religious Deliberation and Decision-Making Threatens Religious Autonomy.

Compelled disclosure of religious organizations' internal records threatens their constitutionally protected autonomy. Decisions related to the selection or retention of ministers, resolution of doctrinal disputes, internal communications related to matters of public controversy, church disciplinary activities, financial decisions, matters related to church membership—all of these are protected against government intrusion by the church autonomy doctrine.

This Court has long recognized that compelled disclosure of private information "has the potential for substantially infringing the exercise of First Amendment rights." *Buckley* v. *Valeo*, 424 U.S. 1, 66 (1976). Forced disclosure of membership lists or financial contributions may violate the freedom of association by deterring members or potential members from joining for fear of harassment or invasion of privacy. See, *e.g.*, *NAACP* v. *Alabama*, 357 U.S. 449, 462–63 (1958); *Buckley*, 424 U.S. at 65–66. Disclosing internal communications can also inhibit the frank, open dialogue necessary for effective decision-making. See *Perry* v. *Schwarzenegger*, 591 F.3d 1147, 1162–63 (9th Cir. 2010).

Compelled disclosure poses similar concerns for religious autonomy. Because the First Amendment "'gives special solicitude to the rights of religious organizations,' they must enjoy a *greater* right to control their own affairs than that enjoyed by other groups." *Cath. Charities Bureau, Inc.* v. *Wisc. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 257 (2025) (Thomas, J., concurring) (quoting *Hosanna-Tabor*, 565 U.S. at 189) (emphasis added).

To start, compelled disclosure of internal religious activities may "affect the way an organization carrie[s] out what it underst[ands] to be its religious mission." *Corp. of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 336 (1987). A church that believes its selection of ministers, or resolution of doctrinal disputes, will be publicized may feel pressure to make decisions "with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of [its] own personal and doctrinal assessments." *Rayburn* v. *Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). By injecting such "secular interests in[to] matters of purely ecclesiastical concern," compelled disclosure strikes at the heart of church autonomy. *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

Official investigations may also "cause the State to intrude upon matters of church administration and government." *McClure* v. *Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972). An official investigation "invades the religious body's integrity" by demanding release of otherwise private information. *Whole Woman's Health* v. *Smith*, 896 F.3d 362, 372 (5th Cir. 2018). This intrusion becomes more severe as "the full

panoply of legal process" unfolds. *Rayburn*, 772 F.2d at 1171. Subpoenas, discovery, and cross-examination aim "to probe the mind of the church" on a range of subjects. *Ibid.* Invading the province of religious decision-making in this way crosses a boundary guarded by the First Amendment's "no trespassing" sign.

Compelled disclosure concerning doctrinal disputes or church policy carries grave dangers for church autonomy. As the Tenth Circuit has explained, "the church autonomy doctrine is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely." *Bryce* v. *Episcopal Church in Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002). Government may not act in ways that "inhibit[] the free development of religious doctrine." *Presbyterian Church in the U.S.*, 393 U.S. at 449. Nor may it hinder the ability of churches to "decide for themselves, *free from state interference*, matters of * * * faith and doctrine." *Our Lady of Guadalupe*, 591 U.S. at 737 (quoting *Kedroff*, 344 U.S. at 116) (emphasis added).

Equally problematic is the forced disclosure of internal communications concerning matters of public controversy. Like all voluntary associations, religious organizations have a First Amendment right to advocate for their preferred policies in the public square. See *Whole Woman's Health*, 896 F.3d at 374. Indeed, for many religious organizations, doing so may be a matter of religious duty. American history is deeply impressed with the effort of churches and other religious organizations to bring their moral influence to public controversies. "Whether the cause has been abolition, prohibition, or integration, the churches and their leaders have played a central, sometimes a crucial, role in translating what the churches conceived to be moral principle into rules of law." Mark

DeWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History* 62 (1965). "[T]he importance of securing religious groups' institutional autonomy, while allowing them to enter the public square, cannot be understated." *Whole Woman's Health*, 896 F.3d at 374.

Compelled disclosure of a religious organization's internal communications concerning public advocacy violates its constitutional autonomy. As with other such intrusions, forced disclosure inhibits the full and frank internal dialogue necessary for religious organizations to formulate policy positions based on their sincere beliefs and communicate them publicly. It also exposes the religious body's decision-making processes to unwanted public scrutiny and may "induce similar ongoing intrusions against [the religious body's] self-government" by other actors. See *id.* at 373. Compelled disclosure may also empower opponents "to harass, impose disastrous costs on, and uniquely burden religious organizations." *Id.* at 373–74.

Forced disclosure of church financial or membership information poses an especially sharp threat to religious autonomy. It is a matter of first principle that "any interference in church financial affairs" raises immediate constitutional concerns. *Huntsman* v. *Corp. of the President of The Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 813 (9th Cir. 2025) (en banc) (Bumatay, J., concurring). Courts have no institutional competency to assess the proper uses of religious donations. See *id.* at 797–98 (Bress, J., concurring in the judgment). Financial management (absent evidence of fraud or self-dealing) is left to religious leaders. See *ibid.*

Compelled disclosure of church finances subjects such information to "government perusal" and "public

examination" and "ultimately may form the basis for * * * governmental involvement in [churches'] fiscal management." *Surinach* v. *Pesquera De Busquets*, 604 F.2d 73, 78 (1st Cir. 1979). Even more, it may arm "private groups or the press with the tools" to pressure churches to change how they collect or spend their money. *Ibid.* Either outcome seriously violates religious organizations' constitutionally protected autonomy.

Membership information, including recording how a person becomes a church member and determining what conditions apply to membership, is plainly a matter of church government. So too are "questions of discipline." *Kedroff*, 344 U.S. at 113 (quoting *Watson*, 80 U.S. (13 Wall.) at 727). As such, "churches enjoy an absolute privilege from scrutiny by * * * secular authorit[ies]" on the subject. *Hadnot* v. *Shaw*, 826 P.2d 978, 987 (Okla. 1992). Ordering a church to disclose details of a parishioner's membership status—and particularly the details of ecclesiastical discipline against the member—undeniably intrudes into church autonomy.

None of this means that religious organizations are excused from reasonable investigative demands that do not involve areas of religious activity. But as we've explained, profound constitutional concerns arise from compelled disclosure of religious organizations' internal religious activities. Careful judicial scrutiny is necessary when the government demands such information. Religious organizations need an impartial forum to present their legal objections and obtain relief when such demands transgress constitutional limits.

B. Compelled Disclosure of Internal Religious Activities Risks Undue Government Entanglement in Religious Issues.

Forcing religious organizations to disclose internal religious activities to government investigators can also create ongoing government "entanglement in religious issues." *Our Lady of Guadalupe*, 591 U.S. at 761. The entanglement doctrine guards against intrusions into religious autonomy by prohibiting "official and continuing surveillance" of religious activities "leading to an impermissible degree" of "government entanglement with religion." *Walz* v. *Tax Comm'n of City of N.Y.*, 397 U.S. 664, 674–75 (1970). The doctrine "protects religious institutions from governmental monitoring or second-guessing of their religious beliefs and practices." *Colo. Christian Univ.* v. *Weaver*, 534 F.3d 1245, 1261 (10th Cir. 2008) (McConnell, J.); see also Carl H. Esbeck, *Establishment Clause Limits on Governmental Interference with Religious Organizations,* 41 Wash. & Lee L. Rev. 347, 397 (1984).

Originally "formulated as an independent requirement of the Establishment Clause," *Colo. Christian Univ.*, 534 F.3d at 1261, the entanglement doctrine later became part of the now-discredited three-part test in *Lemon* v. *Kurtzman*, 403 U.S. 602, 613 (1971), *abrogation recognized by Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022). But its historical roots long predate *Lemon*, and the Court drew on its early church autonomy decisions as a basis for the doctrine. See *Kennedy*, 597 U.S. at 535 (Establishment Clause analysis should be governed "by 'reference to historical practices and understandings'" (quoting *Town of Greece* v. *Galloway*, 572 U.S. 565, 576 (2014)).

1. Founding-era figures expressed concern with "entanglement linked to government control over

religion and intermeddling with religious practices." Stephanie H. Barclay, *Untangling Entanglement*, 97 Wash U. L. Rev. 1701, 1721 (2020). John Adams wrote that the English practice of "entangl[ing]" its constitution with "spiritual lords" and "bishops" incentivized "the utmost artifices of bigotry" in society, along with "bribery and corruption at elections." 3 John Adams, *A Defence of the Constitutions of Government of the United States of America*, *in* 6 *The Works of John Adams, Second President of the United States* 3, 119 (Charles Francis Adams ed., 1851). Timothy Dwight, a Congregationalist minister who served as President of Yale University, decried the practice of "religious establishments" and the accompanying "injustice of prescribing creeds and * * * acts of conformity." Timothy Dwight, *A Sermon Preached at Northampton on the Twenty-Eighth of November 1781: Occasioned by the Capture of the British Army Under the Command of Earl Cornwallis* 31–32 (1781). Sentiments like these reflected a widespread desire to avoid one of the central elements of established religion—government "control over doctrine, governance, and personnel" of churches. See Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2131 (2003).

This Court's explication of the entanglement doctrine drew on the same precedents that affirmed the church autonomy doctrine. *Walz*, which first announced the entanglement doctrine, see 397 U.S. at 674–79, grounded its historical analysis in part in *Everson* v. *Board of Education of Ewing Township*, 330 U.S. 1 (1947). *Everson* in turn quoted approvingly from *Watson* v. *Jones*, the fountainhead of this Court's church autonomy jurisprudence. *Everson* recited *Watson*'s teaching that "[t]he structure of our

government has, for the preservation of civil liberty, * * * *secured religious liberty from the invasions of the civil authority*." *Id.* at 15 (quoting *Watson*, 80 U.S. (13 Wall.) at 730) (emphasis added).

To be sure, critics have lodged powerful critiques against other aspects of *Everson*'s reasoning and use of history. See, *e.g.*, *Wallace* v. *Jaffree*, 472 U.S. 38, 91–106 (1985) (Rehnquist, J., dissenting). But *Everson*'s concerns with securing religious liberty against "invasions of the civil authority," 330 U.S. at 15, remain urgent today.

2. Recent case law confirms the Court's commitment to the principle of non-entanglement as a key component of church autonomy. In *Our Lady of Guadalupe*, for example, the Court rejected the argument that the ministerial exception applies only to employees who are "practicing" members of a religious employer's faith, because deciding whether a person is a practicing member of a particular faith "would risk judicial entanglement in religious issues." 591 U.S. at 761.

Similarly, in *Carson* v. *Makin*, 596 U.S. 767 (2022), the Court rejected the contention that the First Amendment allows States to disqualify private religious schools from otherwise-available public benefits based on the possibility the school might put the benefits to religious uses, because "scrutinizing whether and how a religious school pursues its educational mission would * * * raise serious concerns about state entanglement with religion." *Id.* at 787. Neither decision relied on *Lemon* or its abandoned test. Rather, both treated entanglement as an aspect of religious autonomy.

3. Compelled disclosure of religious organizations' internal religious activities risks excessive government entanglement with religion on numerous fronts. It constitutes "governmental monitoring" of religious beliefs and practices, *Colo. Christian Univ.*, 534 F.3d at 1261, as investigators demand information from religious organizations about their doctrine, practices, and policies and then "troll[] through" their answers for details about those same subjects, *Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000).

Compelled disclosure is also usually only one part of a lengthier investigative process. Initial demands will give way to follow-up demands, disputes over the scope of demands, disputes over compliance, and—if investigators still aren't satisfied—litigation and potential enforcement actions. Such "official and continuing surveillance" of religious activities is the definition of unlawful entanglement. *Walz*, 397 U.S. at 675; see also *Surinach*, 604 F.2d at 78 (officials' "ongoing powers to * * * ensure compliance with" orders, including ability to compel religious organization to keep records and allow inspection of papers and facilities, threatened "unconstitutional degree of entanglement").

Investigative demands can also easily lead to "second-guessing of" an organization's "religious beliefs and practices." *Colo. Christian Univ.*, 534 F.3d at 1261. Suppose a religious employer, under threat of subpoena, discloses internal communications related to the hiring or firing of an employee who performs ministerial duties. Investigators—or the employee herself—might use those communications to argue the employer's proffered reason for the hiring decision was pretextual. If the proffered reason relates to questions of religious belief or practice, probing "the *real reason* for" the hiring decision would require a court "to make

a judgment about church doctrine" and the importance the religious employer attaches to the asserted belief or practice. *Hosanna-Tabor*, 565 U.S. at 205 (Alito, J., concurring). No wonder that the Court rejected any inquiry into pretext as "miss[ing] the point of the ministerial exception." *Id.* at 194 (majority op.).

4. The same holds true for doctrinal disputes and other matters of internal religious policy. Compelled disclosure of internal communications concerning such decisions invites second-guessing by investigators regarding the rationale for those decisions, as well as their substance. This sort of "searching case-by-case analysis" into the nature and background of a religious organization's internal decisions "results in considerable ongoing government entanglement in religious affairs." *Amos*, 483 U.S. at 343 (Brennan, J., concurring in the judgment).

Disclosure of financial matters and membership information can also lead to second-guessing of a religious organization's beliefs and practices. Investigators may question the wisdom or religious purposes of certain financial decisions or the procedures that accompanied membership actions. Indeed, given that the entire purpose of compelling disclosure of internal religious activities is to *probe* those activities, it seems fair to conclude that compelled disclosure usually *will* lead to second-guessing. There is, consequently, a significant risk that forced disclosure will lead to impermissible government entanglement with religion.

C. Religious Organizations Face an Ongoing Threat of Investigative Demands by State and Local Government Actors.

The dangers outlined above are not hypothetical. Hostile state officials are perfectly willing to make intrusive demands for information about religious organizations' "internal management decisions." *Our Lady of Guadalupe*, 591 U.S. at 746. Below are just a few instances:

- Washington targeted a private Christian university's religious hiring practices for investigation. The State demanded years' worth of sensitive internal employment information and ordered the university to implement a document-retention hold.[2]
- Vermont launched an investigation into a private religious school over its policies regarding sexuality and gender identity. After the State initially determined the school had violated State nondiscrimination rules, the school appealed and ultimately prevailed.[3]
- The City of Houston subpoenaed communications from pastors who opposed a nondiscrimination ordinance. The city demanded all "speeches, presentations, or sermons" the pastors had

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[2] Appellant's Opening Br. at 9–10, *Seattle Pac. Univ.* v. *Ferguson*, 104 F.4th 50 (9th Cir. 2024) (No. 22-35986).

[3] Peter D'Auria, *In a Vermont Christian School, a State Investigation Highlights Anxiety over Discrimination*, VtDigger (May 9, 2022), https://vtdigger.org/2022/05/09/in-a-vermont-christian-school-a-state-investigation-highlights-anxiety-over-discrimination.

given that mentioned the ordinance, LGBT-related issues, or Houston's mayor.[4]

- The City of Philadelphia launched an inquiry into a local Catholic Social Services agency after the agency said it "would not be able to consider prospective foster parents in same-sex marriages." The city stopped referring children to the agency for placement.[5]

Highly intrusive investigative demands of religious organizations are increasingly common. One law firm that specializes in representing churches and nonprofit organizations in state investigations reports a significant rise in such investigations. In the decade before 2022, the firm "only saw a handful" of such investigations, primarily focused on secular nonprofits. But since 2022, the firm has represented churches and other nonprofits in "more than a dozen" such investigations.[6]

II. PROBING RELIGIOUS ORGANIZATIONS' INTERNAL OPERATIONS ALSO CHILLS THE EXERCISE OF FIRST AMENDMENT RIGHTS.

State-driven investigative demands not only interfere directly with religious organizations' constitutionally protected autonomy, but the process of investigation itself often chills the exercise of First Amendment

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[4] Josh Sanburn, *Houston's Pastors Outraged After City Subpoenas Sermons over Transgender Bill*, Time (Oct. 17, 2014), https://time.com/3514166/houston-pastors-sermons-subpoenaed.

[5] *Fulton* v. *City of Phila.*, 593 U.S. 522, 530–31 (2021).

[6] Dustin Gaines, *AG Investigations into Churches and Nonprofits Are on the Rise*, Church Law & Tax (Sept. 19, 2023), https://www.churchlawandtax.com/stay-legal/church-state/ag-investigations-into-churches-and-nonprofits-are-on-the-rise.

rights. This Court has recognized that "[i]t is not only the conclusions that may be reached" by government actors "which may impinge on rights guaranteed by the [First Amendment], but also the very process of inquiry leading to findings and conclusions." *NLRB* v. *Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979). "[B]road and sweeping state inquiries into the[] protected areas of" belief and association "discourage citizens from exercising rights protected by the Constitution." *Ams. for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 610 (2021) (quoting *Baird* v. *State Bar of Ariz.*, 401 U.S. 1, 6 (1971)). Nowhere is that more true than for religious organizations.

A. Probing a Religious Organization's Internal Operations Chills Its Exercise of the Rights of Association and Assembly.

Perhaps the most obvious form of chill concerns religious entities' related rights of association and assembly. The right of association, which is "implicit" in the First Amendment, guarantees the freedom to "associate with others in pursuit of a wide variety of political, social, economic, educational, *religious*, and cultural ends." *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 622 (1984) (emphasis added). The right of assembly, which grew out of efforts by religious dissenters in England to meet together for religious worship, see John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 30 (2012), protects the ability to gather for a variety of purposes, including religious purposes, see Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 16 (2000) (describing the "freedom to gather together for purposes of religious worship" as the "precursor * * * for the freedom of assembly"). When it comes to public advocacy, the right

of assembly protects the ability to "meet peaceably for consultation in respect to public affairs." *De Jonge* v. *Oregon*, 299 U.S. 353, 364 (1937) (quoting *United States* v. *Cruikshank*, 92 U.S. 542, 552 (1875)).

Effective association requires privacy, both because discussion and debate are likely to be more candid behind closed doors and because public scrutiny may discourage otherwise interested individuals from taking part. See *NAACP*, 357 U.S. at 462; *Perry*, 591 F.3d at 1162. Effective assembly likewise requires the ability to discuss matters freely and openly and to exchange information relevant to the body's decision-making. See *Thomas* v. *Collins*, 323 U.S. 516, 532 (1945) (explaining that the "right to * * * discuss and inform" other participants about matters under consideration is "part of free assembly"). Delegates to the Philadelphia Convention, from which the Constitution emerged, kept their deliberations confidential for exactly these reasons. See 1 *The Records of the Federal Convention of 1787*, at 17 (Max Farrand ed., 1966) (adopting rule that "nothing spoken in the House be printed, or otherwise published or communicated without leave").

1. Starting with the right of association, probing a religious organization's internal operations may hinder the candor necessary for effective discussion and debate, as members may worry how their comments or positions on various matters will be interpreted by outside actors who are not part of the faith community. See *Amos*, 483 U.S. at 336 (observing that a religious organization "might understandably be concerned that a judge"—or other government actor— "would not understand its religious tenets and sense of mission"). Deliberation over religious doctrine, formulation of policy, and exercise of church discipline

all require frank communication among members and leaders. If participants have reason to believe their statements may be subject to public scrutiny, that suspicion will unavoidably "have a deterrent effect on the free flow of information" on those and other important subjects. *Perry*, 591 F.3d at 1162. In some cases, members may even fear harassment, "economic reprisal," or physical threats if their activity in the group becomes public knowledge. *NAACP*, 357 U.S. at 462–63.

Investigation also heightens the risk of further government action, such as litigation or agency enforcement proceedings. As the First Circuit has put it, "[t]he gathering of information is not * * * an end in itself." *Surinach*, 604 F.2d at 75. Rather, it frequently "is merely a first step" to further, even more intrusive action, such as hearings, public disclosure, or attempts at regulation. *Ibid.* The "[f]ear of potential liability" that hangs over any government investigation cannot help but "affect the way" a religious organization "carrie[s] out what it underst[ands] to be its religious mission." *Amos*, 483 U.S. at 336. Indeed, that may be the very *point* of the investigation—to intimidate the religious organization into changing how it exercises religion, whether by altering its religious doctrine or retreating from its public-facing activities.

Probing religious organizations' internal operations chills their associational rights in other ways, too. It diverts time and resources away from the organization's religious mission. It may also cause the organization to forego certain religious activities altogether, either because the investigation saps scarce resources or instills fear that investigators will disapprove of certain activities. In these and other ways, "each governmental demand for disclosure

brings with it an additional risk of chill." *Bonta*, 594 U.S. at 618.

2. Similar analysis applies to the right of assembly, both for religious purposes and for public advocacy. Investigation by outside actors hinders the free flow of information within an organization and candor between members, which impedes the discussion and sharing of information that are "part of free assembly." *Thomas*, 323 U.S. at 532. Such information-sharing is necessary both for religious worship and public advocacy. The threat of litigation or other enforcement activity that attends any government investigation likewise can distort group decision-making or alter the goals a religious organization seeks to pursue. See *Rayburn*, 772 F.2d at 1171; *EEOC* v. *Cath. Univ. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996).

The diversion of time and resources an investigation entails may also make it more difficult for a religious body to meet "for consultation in respect to public affairs," *De Jonge*, 299 U.S. at 364, or discourage it from engaging in such activities in the first place. That too impairs the community's right of assembly.

B. Probing a Religious Organization's Internal Operations Chills Its Free Exercise of Religion.

Another right that is often chilled by investigation into a religious entity's internal activities is the free exercise of religion. That precious right protects "the ability of those who hold religious beliefs * * * to live out their faiths in daily life," including through "the performance of (or abstention from) physical acts." *Kennedy*, 597 U.S. at 524 (quoting *Emp. Div., Dep't of Hum. Res. of Or.* v. *Smith*, 494 U.S. 872, 877 (1990)).

As noted previously, religious autonomy in matters of faith, doctrine, and internal management is partly grounded in the right of free exercise. See *Our Lady of Guadalupe*, 591 U.S. at 746 (noting that "[s]tate interference in [such] sphere[s] would obviously violate the free exercise of religion"). And investigative demands that intrude into churches' ability to decide such issues "free from state interference," *id.* at 737 (quoting *Kedroff*, 344 U.S. at 116), can chill the exercise of that right. For example, demands that a church disclose internal debates about doctrine or church policy may "inhibit[] the free development of religious doctrine" within the body. *Presbyterian Church in the U.S.*, 393 U.S. at 449. Similarly, inquiry into a church's financial decisions or disciplinary activities likewise may affect how a church carries out those functions, injecting secular concerns into what should be solely "ecclesiastical matters." *Id.* at 451.

But the chill on religious exercise goes beyond autonomy-related concerns. If church leaders and members come to believe that preaching certain doctrines, or practicing certain forms of worship, will trigger increased government scrutiny, they may deemphasize those observances or forego them altogether. Religious organizations that engage in public advocacy as a matter of religious commitment may also feel pressure to withdraw their voices from the democratic conversation rather than run the risk of intrusive government investigations. Probing a religious body's internal operations may discourage members from freely communicating about matters of faith and doctrine, impede them from using church resources to promote politically unpopular religious concepts, or sap time and resources the body would otherwise use to engage in religious worship.

In all these ways, probing a religious institution's internal operations may easily chill the exercise of its free exercise rights.

III. RELIGIOUS GROUPS NEED REASONABLE ACCESS TO FEDERAL COURTS TO VINDICATE THEIR FEDERAL RIGHTS.

These problems and threats call for a federal court system that is open to vindicate First Amendment rights. Indeed, a principal function of inferior federal courts is to provide an impartial forum where the federal rights of unpopular groups can receive a fair hearing. Such impartiality is especially crucial for religious organizations, which too often are the target of local prejudice. Numerous cases from this Court's history illustrate that reality. Without a federal forum, the protections of the First Amendment for religious organizations and people of faith in many cases would be uncertain, even hollow.

A. The Founders Created a Federal Judicial System to Guarantee Federal Rights.

From the outset, the Founders recognized the critical need for a federal judicial system that would protect federally created rights.

1. The judicial scheme under the Articles of Confederation, which lacked a national judiciary and left the enforcement of federal rights largely to state discretion, had proven wholly inadequate to that task. See Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and The Federal System* 6–8 (6th ed. 2009). Delegates to the Constitutional Convention thus held "a near-unanimous view" that "federal review of * * * federal law [was] * * * a virtual necessity." Barry Friedman, *A Different Dialogue: The*

Supreme Court, Congress and Federal Jurisdiction, 85 Nw. U. L. Rev. 1, 33–34 (1990). Only a federal forum, they believed, could guarantee the independence and impartiality necessary to effectively protect rights created under federal law. See, *e.g.*, *The Federalist* No. 81, at 486 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (expressing concern that state judges would "be too little independent to be relied upon for an inflexible execution of the national laws" and that "the prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes").

The Founders worried, too, that state courts might harbor prejudice against out-of-state litigants or other unpopular groups. Alexander Hamilton put the point clearly in *The Federalist*: Reasoning that "it would be natural that the [state] judges * * * should feel a strong predilection to the claims of their own government," he argued that federal courts were the "proper tribunals" for "controversies between different States and their citizens." *The Federalist* No. 80, at 478–79. James Madison likewise argued that federal jurisdiction was necessary to avoid "a strong prejudice * * * in some states, against the citizens of others, who may have claims against them." *Remarks of James Madison, a Member of the Federal Convention, Before the Convention of the Commonwealth of Virginia*, *in* 3 *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution* 531, 533 (Jonathan Elliot ed., 2d ed. 1836). The resulting "Madisonian Compromise," adopted as Article III, Section 1 of the Constitution, vested "[t]he judicial Power of the United States * * * in one supreme Court" and "in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. Art. III, § 1.

2. Leading figures during the early Republic expressed similar views about the critical need for access to federal courts. Joseph Story worried that the methods of judicial appointment in the States would create incentives for bias in favor of local litigants. See 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1676, at 546 (1833). In his view, federal courts provided a crucial alternative because they operate "impartial" to "local attachments." *Ibid.*

John Marshall expressed much the same sentiment. He wrote that the creation of federal jurisdiction was rooted in "apprehensions" that state courts would not "administer justice as impartially as those of the nation" in cases where local interests favored one party over another. *Bank of U.S.* v. *Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (Marshall, C.J.), *overruled on other grounds by Louisville, Cincinnati & Charleston R.R. Co.* v. *Letson*, 43 U.S. (2 How.) 497 (1844).

3. In line with these concerns, one of the First Congress's first orders of business was the Judiciary Act of 1789, which created a nationwide system of inferior federal courts and established federal diversity jurisdiction. See Ch. 20, §§ 2–4, 11, 1 Stat. 73, 73–74, 78. Congress additionally created limited grants of federal question jurisdiction in specific areas before later creating general federal question jurisdiction as part of the Judiciary Act of 1875. See Ch. 137, § 1, 18 Stat. 470, 470.

These jurisdictional pathways "play an indispensable role in maintaining the structural integrity of the constitutional design" by ensuring that litigants have access to an impartial forum when seeking to vindicate federally created rights. *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 275 (1997). And, as discussed below, they are critically important to

religious organizations, which often find themselves in the crosshairs of local prejudice.

B. Section 1983 Guarantees Access to Federal Court for Parties Injured by Unconstitutional State or Local Government Action.

Section 1983, moreover, works hand-in-glove with Article III to provide redress for parties who have suffered deprivation of their constitutional rights. Congress enacted Section 1983 as part of the Civil Rights Act of 1871 to address the "systemic breakdown in the administration of * * * justice" in Southern States, where former slaves and Union sympathizers often endured violence with the consent and sometimes even direct involvement of local authorities. Donald H. Zeigler, *A Reassessment of the* Younger *Doctrine in Light of the Legislative History of Reconstruction*, 1983 Duke L.J. 987, 1013 (1983). Local prosecutors, judges, and juries routinely refused to hold accountable perpetrators who committed violence against Black people, while at the same time targeting victims of such violence for "civil and criminal prosecutions to punish and intimidate." David Achtenberg, *With Malice Toward Some:* United States v. Kirby*, Malicious Prosecution, and the Fourteenth Amendment*, 26 Rutgers L.J. 273, 275 (1995). As one leading supporter of Section 1983 lamented, "the local administrations have been found inadequate or unwilling to apply the proper corrective * * * and the records of the public tribunals are searched in vain for any evidence of effective redress." Cong. Globe, 42d Cong., 1st Sess. 374 (1871) (Rep. Lowe).

With that historical backdrop, Section 1983's "central purpose" was "to provide compensatory relief to those deprived of their federal rights by state

actors." *Felder* v. *Casey*, 487 U.S. 131, 141 (1988). Congress designed Section 1983 to be "*supplementary* to any remedy" already available under state law, *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 599 U.S. 166, 177 (2023) (emphasis added), and to ensure that individuals deprived of constitutional rights had "immediate access to the federal courts," *Patsy* v. *Bd. of Regents of Fla.*, 457 U.S. 496, 504 (1982). Section 1983 thus has long been understood not to require "exhaustion of state administrative remedies * * * as a prerequisite to bringing an action." *Id.* at 516. Less than a decade ago, the Court forcefully reaffirmed that principle when overruling a decision that required a regulatory takings claimant to exhaust remedies available under state law before bringing a Section 1983 action in federal court. See *Knick* v. *Twp. of Scott*, 588 U.S. 180, 202 (2019).

So too here: Requiring religious plaintiffs to slog through hostile or drawn-out state proceedings frustrates the constitutional protections Section 1983 was adopted to guarantee. Worse yet, it risks foreclosing relief altogether when local proceedings become the end of the road. See *id.* at 204 (noting that proceeding to resolution first in state court can have a "preclusive effect in any subsequent federal suit").

C. The Availability of Federal Judicial Relief Is Vital for Religious Groups.

This Court's cases confirm the grave importance of a federal forum for religious groups seeking to vindicate their First Amendment rights. Although our Nation has formally guaranteed religious liberty from its earliest days, see U.S. Const. Amend. I, that promise often encounters headwinds when a religious group or its beliefs and practices are unpopular.

1. Start with *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943). There, at the conclusion of a federal proceeding, the Court struck down a State policy requiring all public schoolchildren, on threat of expulsion, to salute the flag. *Id.* at 626–28, 642. State officials had made various modifications to the policy to accommodate concerns raised by parents and civic groups. *Id.* at 627–28. But they refused to honor requests by Jehovah's Witnesses—whose religious beliefs forbid them from saluting the flag—to take a different pledge that would not violate their beliefs. *Id.* at 628–29 & n.4. State officials then targeted noncompliant Jehovah's Witness families with severe penalties. They expelled children from school, threatened to take children from their parents, and prosecuted parents for "causing delinquency." *Id.* at 630.

By declaring the State's policy unconstitutional, this Court protected the freedom of Jehovah's Witnesses to live true to their religious principles in the face of unmistakable hostility from local communities. And that decision was greatly facilitated by the availability of a federal forum in which the Witnesses could bring their claims.

Consider as well *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), which held that Amish parents could not be criminally punished for declining to send their children to school past eighth grade. There, the State's insistence that Amish families comply with its compulsory education law betrayed clear disregard for their religious beliefs and way of life. As the Court explained, "by exposing Amish children to worldly influences * * * and values contrary to [their] beliefs," compulsory education past eighth grade "substantially interfer[es] with the religious development of the

Amish child and his integration into the way of life of the Amish faith community." *Id.* at 218. Those consequences "carrie[d] with [them] a very real threat of undermining the Amish community and religious practice as they exist today." *Ibid.*

By affirming the right of Amish parents to transmit their religious practices and way of life to the next generation, the Court once again confirmed the importance of an impartial judicial forum to counteract local insensitivity to religious beliefs. And as before, that result was facilitated by the availability of a federal forum—this Court—in which they could vindicate their rights.

2. Three recent cases also illustrate that federal courts remain vital protectors of religious freedom under the First Amendment.

In *Kennedy*, a high school football coach was fired for kneeling on the field after games "to offer a quiet prayer of thanks." 597 U.S. at 512–13. The coach did not ask anyone to join him, and the prayers were brief. *Id.* at 517–19. The school allowed coaches to engage in a variety of other post-game practices, such as talking with friends or making phone calls, *id.* at 530, but refused to permit even a brief, silent religious observance. Affirming the foundational importance of "[r]espect for religious expressions * * * in a free and diverse Republic," this Court declared—at the conclusion of a federal proceeding—that the First Amendment does not "tolerate[] that kind of discrimination." *Id.* at 543–44.

In *Masterpiece Cakeshop* v. *Colorado Civil Rights Commission*, 584 U.S. 617 (2018), State officials expressed "clear and impermissible hostility toward the sincere religious beliefs" of a baker who declined to

create a custom artistic cake for a same-sex wedding on religious grounds. *Id.* at 634. One official compared the baker's invocation of his religious beliefs to "defenses of slavery and the Holocaust" and described his beliefs as "despicable." *Id.* at 635. After Colorado officials ordered the baker to create the custom artistic cake despite his religious objections, this Court made clear what should have been plain all along: the baker "was entitled to a neutral decisionmaker who would give full and fair consideration to his religious objection." *Id.* at 640. Here again, the availability of a federal forum facilitated this favorable outcome.

The same thing happened just last Term, when the Court again protected the rights of religious individuals against overt government hostility. In *Mahmoud* v. *Taylor*, 145 S. Ct. 2332 (2025), a group of parents asked to excuse their children from classroom readings on LGBT-related topics that promoted views hostile to their religious beliefs. The county school board not only denied the parents' request, but also disparaged their beliefs. *Id.* at 2346–47. One board member compared the objecting parents to "white supremacists who want to prevent their children from learning about civil rights" and "xenophobes who object to stories about immigrant families." *Id.* at 2347 (internal quotation marks omitted).

Again, the Court protected the rights of religious parents against local hostility, holding that the parents were entitled to notice and opportunity to opt their children out of the challenged readings. That ruling was made possible, once more, by the availability of a federal forum.

Taken together, these cases underscore a critical principle. When local officials act with hostility (or at best insensitivity) to religious beliefs, injured parties

need a federal forum to secure protection for their federal constitutional rights.[7] Particularly in light of the ongoing pattern of intrusive state investigative demands described above, the need for an impartial federal forum is as urgent as ever. Without access to federal courts, the promise of religious liberty for religious organizations and their members will be subject to state judicial systems vulnerable to anti-religious animus.

[7] In *Yoder*, because the case grew out of a state criminal proceeding, the Amish parents made their initial appeals through the state court system. 406 U.S. at 213. But they found ultimate vindication in this Court, which affirmed that their state criminal convictions could not stand because forcing them to send their children to school past eighth grade violated their free exercise rights. *Masterpiece Cakeshop*, too, involved an initial state appeal. 584 U.S. at 630. But the baker in that case obtained relief only from this Court.

CONCLUSION

State investigations can pose direct conflicts with the First Amendment rights of religious organizations. When that happens, federal courts are an indispensable bulwark against local prejudice. By requiring First Choice to pursue its constitutional claims in state court before it can seek relief in federal court, the decision below failed to honor one of the fundamental purposes and guarantees of our federal judicial system. This Court should reverse.

Respectfully submitted,

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