No. 25-776

IN THE

Supreme Court of the United States

YOUTH 71FIVE MINISTRIES,

Petitioner,

v.

CHARLENE WILLIAMS, Individually and as Director of Oregon Department of Education, et al.,

Respondents.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE

CHRISTIAN LEGAL SOCIETY, COUNCIL OF CHRISTIAN COLLEGES AND UNIVERSITIES, RELIGIOUS FREEDOM INSTITUTE, COALITION OF VIRTUE, CARDINAL NEWMAN SOCIETY, GREAT NORTHERN UNIVERSITY, BIOLA UNIVERSITY, THE CATHOLIC UNIVERSITY OF AMERICA, COLORADO CHRISTIAN UNIVERSITY, LIBERTY UNIVERSITY, POINT LOMA NAZARENE UNIVERSITY, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS, ASSOCIATION OF CLASSICAL CHRISTIAN SCHOOLS, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, AND ASSOCIATION FOR BIBLICAL HIGHER EDUCATION IN CANADA AND THE UNITED STATES IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

CHRISTIAN M. POLAND
BRYAN CAVE LEIGHTON PAISNER LLP
161 North Clark Street, Ste. 4300
Chicago, IL 60601

BARBARA A. SMITH*
SETH M. REID
KOLTEN C. ELLIS
BRYAN CAVE LEIGHTON PAISNER LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102
(314) 259-2367
barbara.smith@bclplaw.com

Counsel for Amici Curiae

*Counsel of Record

February 17, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Rules

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici are an interfaith collection[2] of religious educational institutions, associations, and non-profit organizations that depend upon the Constitution's protection of church autonomy—religious organizations' right "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) (citation omitted). Amici have an interest in protecting the right of all religious organizations to require that their staff—especially the individuals charged with carrying the faith message of a religious institution to the outside world—adhere to the faith of that institution.

The Ninth Circuit's opinion guts the right to religious autonomy by limiting the ability of religious institutions within its spacious borders to assert religious autonomy only as a defense to litigation rather

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[1] In compliance with Rule 37.2, Amici notified all parties of their intent to file this brief at least ten days before filing. Amici certify, pursuant to Rule 37.6, that 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 intended to fund the preparation or submission of this brief.

[2] Amici consist of the Christian Legal Society, the Council of Christian Colleges and Universities, the Religious Freedom Institute, the Coalition of Virtue, the Cardinal Newman Society, Great Northern University, Biola University, The Catholic University of America, Colorado Christian University, Liberty University, Point Loma Nazarene University, the American Association of Christian Schools, the Association of Classical Christian Schools, the Association of Christian Schools International, and the Association for Biblical Higher Education in Canada and the United States.

than, as here, affirmatively raising the right. Amici support the petition for writ of certiorari to resolve the circuit split the decision below creates and to ensure that the countless religious organizations (such as Amici) that depend on the right to religious autonomy may continue to enjoy that right.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Oregon Department of Education's noble goal—to provide social services to at-risk youth by funding non-profits who do that work—operates in a noxious way, because Oregon excludes from its funding scheme any religious non-profit that requires its employees to adhere to a statement of faith. Withdrawing otherwise available funding simply because a religious non-profit requires its own employees to adhere to the organization's religious tenets offends the First Amendment. Depriving Youth 71Five of a judicial remedy for this violation disregards this Court's precedent and creates a split with other courts of appeals on a fundamental constitutional right.

The Ninth Circuit allowed Oregon to force Youth 71Five to choose between public funding and faith-based hiring, reasoning that the "religious-autonomy doctrines" are mere "defenses against or limits upon plaintiffs' invocation of *judicial* authority." Pet. App. 24a. That is wrong. Religious autonomy is not only a defense to suit; it may also be raised affirmatively by litigants.

The doctrine protects the right of religious groups to "shape [their] own faith and mission[s] through [their] appointments." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.*, 565 U.S. 171, 188 (2012). This right to select co-religionist employees without

government interference finds its "constitutional foundation" in "the general principle of church autonomy" that both Religion Clauses buttress. *Our Lady of Guadalupe Sch.*, 591 U.S. at 746–748. It is a "component" of the autonomy guaranteed by the Religion Clauses in the First Amendment. *Id.* at 746.

In short, religious organizations are free to hire co-religionists without judicial meddling (the context in which the ministerial exception arose) and without state coercion via conditions on funding (the context here). Here, Oregon tempted a religious non-profit to violate its faith commitments by conditioning grant funding on a commitment not to hire co-religionists. The temptation to forsake faithfulness for finances is not a new one. Cf. Matt. 4:8–10. But the First Amendment prohibits the State from forcing such a choice. So Youth 71Five appropriately responded by raising a religious autonomy claim via Section 1983.

The Court should grant the petition because the Ninth Circuit's decision departs from this Court's precedent—and creates a split of authority among the lower appellate courts—in two ways: it (1) unduly cabins the right to religious autonomy to an affirmative defense, notwithstanding this Court's decisions in which religious autonomy was asserted by a party seeking affirmative relief; and (2) limits the right's application to the judiciary, notwithstanding that it applies to all branches of government.

This case is also exceptionally important, because it implicates the nation's most fundamental rights. At its core, religious autonomy is religious liberty, and that fundamental value is a precious freedom our Founders fought ferociously to protect. As Chief Justice Roberts explained, the Constitution prohibits the "Federal Government—unlike the English Crown"

from interfering in religious hiring. *Hosanna-Tabor*, 565 U.S. at 184. "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." *Id.*

This Court should grant certiorari.

ARGUMENT

I. THE DECISION BELOW IS WRONG AND CONTRADICTS THIS COURT'S PRECEDENTS.

This Court has long recognized that the right to religious autonomy "protects the right of religious institutions '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)). The decision below misapplies this right in two ways. First, it treats the right to religious autonomy as second-class by limiting its application only as a defense to litigation. But just like other constitutional rights, the right to religious autonomy may be asserted affirmatively under 42 U.S.C. § 1983. Second, the decision unduly cabins the right by limiting its application to prohibit meddling by the judiciary. But the right to religious autonomy may be asserted against all forms of state overreach—whether judicial, legislative or (as here) executive.

A. The First Amendment Guarantees The Right Of Religious Organizations To Autonomy In Matters Of Internal Governance.

The church autonomy doctrine precludes interference in matters of church governance, including hiring, and often arises as a defense to litigation. But the right to religious autonomy may also be protected affirmatively by religious organizations through Section 1983.

This Court has long recognized that the First Amendment's Religion Clauses guarantee "freedom for religious organizations" from governmental intrusion into their internal affairs and governance—a liberty known as the church autonomy doctrine (or the right to religious autonomy). *Kedroff*, 344 U.S. at 116. One "essential component" of a "religious body's" autonomy is its "control over" the selection of employees who perform ministerial functions. *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.*, 565 U.S. 171, 201 (2012) (Alito, J., concurring).[3]

"Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 (citation modified). "State interference in

[3] While Youth 71Five has not claimed that *all* its employees serve in ministerial capacities, the breathtaking scope of the Ninth Circuit's decision allows no exception when even undisputedly ministerial hiring is at issue. Amici agree that the church autonomy doctrine protects coreligionist hiring preferences outside the ministerial context, but the archetypical ministerial exception illustrates the importance of the issues presented.

that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters" offends the First Amendment. *Id.*

This Court has not been shy in holding that the First Amendment protects the autonomy of religious institutions in a variety of contexts. One early articulation of the right came in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1872). There, the Court refused to reconsider a determination of the General Assembly of the Presbyterian Church over which faction should control certain property. The Court explained that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Id.* at 727. Other courts have also held that the First Amendment right to religious autonomy bars claims brought against religious institutions for breach of fiduciary duty, see, e.g., *Moon* v. *Family Fed'n for World Peace & Unification Int'l*, 281 A.3d 46, 68 (D.C. 2022), and negligent hiring or retention of ministers, see, e.g., *Pritzlaff* v. *Archdiocese of Milwaukee*, 533 N.W.2d 780, 790 (Wis. 1995).

A critical component of this right is the prerogative of a religious institution to select, free from coercion, the individuals who serve as "messenger[s] or teacher[s] of [a religious organization's] faith." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring). For example, in *Serbian Eastern Orthodox Diocese for United States & Canada* v. *Milivojevich*, the Supreme Court of Illinois invalidated a decision from the Holy

Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church to "defrock[]" the Bishop of the North American diocese. See 426 U.S. 696, 698 (1976). This Court reversed, holding that the First Amendment protected the Serbian Orthodox Church's right to determine "ecclesiastical" matters through its own procedures without further scrutiny in secular courts. See *id.* at 713–714.

The right of religious organizations to autonomy in their selection of ministers arises frequently in employment discrimination litigation, under the "shorthand" label of the "ministerial exception." *Hosanna-Tabor*, 565 U.S. 202 (Alito, J., concurring) (citation omitted). "The ministerial exception exempts a church's employment relationship with its ministers from the application of some employment statutes, even though the statutes by their literal terms would apply." *Behrend* v. *San Francisco Zen Ctr., Inc.*, 108 F.4th 765, 768 (9th Cir. 2024) (citation modified). The ministerial exception "stems" from the "general principle of church autonomy." *Markel* v. *Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 802 (9th Cir. 2024), cert. denied, 145 S. Ct. 2822 (2025). This Court's broad language on the scope of the right—including that the "State" may not "interfere[]" with or even "influence" it, see *Our Lady of Guadalupe Sch.*, 591 U.S. at 746—gives it obvious force beyond the employment discrimination context.

B. Religious Autonomy May Be (Because It Has Been) Utilized To Obtain Affirmative Relief.

As a constitutional right, the right to religious autonomy may be invoked affirmatively, not merely as a defense to litigation. Indeed, the very point of 42

U.S.C. § 1983 is to offer relief "from unconstitutional action under color of state law, '*whether that action be executive, legislative, or judicial.*'" *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972) (emphasis added); cf. *Dennis* v. *Higgins*, 498 U.S. 439, 445 (1991) ("[W]e have rejected attempts to limit the types of constitutional rights that are encompassed within [Section 1983's] phrase 'rights, privileges, or immunities.'").

At bottom, the First Amendment's right to religious autonomy is just that: a constitutional right. It can be asserted and vindicated like any other right against "'executive, legislative, or judicial'" action. *Mitchum*, 407 U.S. at 242. A court may not second guess religious hiring any more than a state executive may coerce or pressure hiring through funding decisions.

The decision below severely constricts the right to religious autonomy by affirming the District Court's holding that religious autonomy is "not [a] 'standalone right[] that can be wielded against a state agency.'" Pet. App. 23a (quoting the district court with alterations). This ignores decisions of this Court spanning decades.

This Court held in *Presbyterian Church in United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church* that a religious organization can assert religious autonomy to obtain affirmative relief. 393 U.S. 440 (1969). The parties there—a Presbyterian denomination and a local congregation that had left the denomination over doctrinal differences—disagreed about who controlled church property and the two parties filed cross-claims. *Id.* at 442–443. While the congregation claimed that the denomination had forfeited its rights to church property under a deed of trust by "substantial[ly] depart[ing]" from its original doctrine,

the denomination counterclaimed "on the ground that civil courts were without power to determine whether the [denomination] had departed from its tenets of faith and practice." *Id.* at 442–443, 450.

This Court agreed with the denomination's church-autonomy theory and reversed a state-court judgment in the denomination's favor. On remand, the Court instructed the state court "may undertake to determine whether" the denomination was "entitled to relief on its cross-claims"—*i.e.*, its claims for affirmative relief springing from the church autonomy doctrine. *Id.* at 450. In other words, *Hull Memorial* endorsed an application of the right to religious autonomy in the exact procedural posture that the Ninth Circuit here claimed fell beyond the doctrine's scope. *Hull Memorial* refutes a key premise of the Ninth Circuit's decision.

This Court again reinforced that the right to religious autonomy may be raised by a party seeking affirmative relief in *Milivojevich*. There, the parties were involved in a religious dispute over whether a bishop had been properly defrocked and replaced by the Serbian Orthodox Church. 426 U.S. at 697–698. Both the bishop and the Church filed "separate complaint[s]" that "sought the same relief," and the cases were "consolidated." *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 328 N.E.2d 268, 270 (Ill. 1975).

This Court held the state court "impermissibl[y] reject[ed]" the Church's determination, as a hierarchical religious body, that the disciplinary process accorded with church law. See *Miliviojevich*, 426 U.S. at 708, 724–725 (holding that "the Constitution requires that

civil courts accept" the decisions of "ecclesiastical tribunals" as "binding" in matters of church "government and direction"). This Court thus reversed and remanded the case, allowing the Church to prevail on its claim for injunctive relief. See *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 387 N.E.2d 285, 288–289 (Ill. 1979) ("[t]he validity of [the bishop's] suspension and removal" was "conclusively adjudicated" by the Church and, in light of *Milivojevich*, the Church was entitled to appoint a successor bishop and take control over property formerly managed by the defrocked bishop).

When Oregon argued below that the ministerial exception is "an affirmative defense" and "exists to protect religious organizations from lawsuits," it ignored this precedent. See Appellee's C.A. Br. 31 (C.A. Dkt. No. 30.1). The Ninth Circuit then wrongly adopted that argument and, in the process, mangled this Court's decision in *Hosanna-Tabor* (which built on the cases establishing that religious autonomy may be affirmatively litigated). See Pet. App. 24a (calling the ministerial exception "'an affirmative defense to an otherwise cognizable claim'" (quoting *Hosanna-Tabor*, 565 U.S. at 195 n.4)). And the panel then further cabined the right of religious autonomy to an affirmative defense against (only) "judicial authority." Pet. App. 24a (emphasis omitted).

That is a misreading of *Hosanna-Tabor*. That case did not break with the precedent establishing that religious autonomy can be raised affirmatively. See *supra* at 4–10. Instead, that case merely reflected the posture in which the right arose, which asked whether, *when a plaintiff brings suit for employment discrimi-*

nation, the ministerial exception operates as a "jurisdictional bar or a defense on the merits." *Hosanna-Tabor*, 565 U.S. at 195 n.4. There is no reason to read *Hosanna-Tabor* as intentionally narrowing the application of religious autonomy or implicitly overruling this Court's precedents.

C. The Right Protects Religious Groups From All Forms Of State Overreach, Whether Judicial, Legislative, Or (As Here) Executive.

The decision below committed a second error in its application of the right to religious autonomy when it limited the right of religious groups to invoke its protections only against the judiciary. See Pet. App. 24a. The decision posits that the Ninth Circuit was "aware of no court of appeals that treats the religious-autonomy doctrines as the basis for standalone claims challenging legislative or executive action" and instead limited the right of religious groups to invoke it only against "*judicial* authority." *Id.* The right is broader than that. Religious autonomy protects religious institutions against "state interference," full stop—not merely from judicial meddling. *Kedroff*, 344 U.S. at 116.

In *Kedroff*, this Court applied the doctrine to invalidate legislative action, namely, a New York law incorporating various Russian Orthodox churches into an "autonomous metropolitan district," distinct from the "Moscow synod." *Id.* at 98–99. The law was "invalid under the constitutional prohibition against interference with the exercise of religion," *id.* at 100, and, more precisely, "church administration, the operation of the churches, [or] the appointment of clergy." *Id.* at 107–108.

On remand, the New York state court held a retrial on a "common-law issue" it claimed was "left open" by this Court's decision. *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam). The state court *again* ruled against the Moscow Synod, holding it "could not under the common law of New York validly exercise the right to occupy the Cathedral." *Id.* But this Court rejected the state courts' mistaken reasoning—repeated in the decision below—that the right to religious autonomy constrains only the judiciary. See *id.* ("[I]t is not of moment that the State has here acted solely through its judicial branch, for *whether legislative or judicial, it is still the application of state power which we are asked to scrutinize*." (emphasis added) (citation omitted)). *Kreshik* again confirms that the right to religious autonomy applies to *all* exercises of state power, not merely the courts.

Similarly, *NLRB* v. *Catholic Bishop of Chicago* recognized that the right to religious autonomy can be asserted affirmatively against executive action. 440 U.S. 490 (1979). There, the NLRB held it had jurisdiction over lay faculty members in private Catholic high schools that provided education "oriented to the tenets of the Roman Catholic faith." *Id.* at 492–493. The schools challenged the NLRB's action, arguing both that the agency lacked jurisdiction and that the NLRB's exercise of its authority implicated the religious schools' First Amendment rights.

The schools did so by "challeng[ing] the Board's orders in petitions to the Court of Appeals for the Seventh Circuit." *Id.* at 495. This Court affirmed the merits of the schools' claims, concluding that the NLRB's exercise of jurisdiction would raise "serious constitu-

tional questions" because it would "necessarily involve" government inquiries into "the good faith of the position asserted by the clergy-administrators" regarding their "school's religious mission." *Id.* at 501–502. This case thus approved of the affirmative use of religious autonomy to challenge executive action.

Kreshik and *Catholic Bishop* both accord with this Court's consistently broad description of the right. See, e.g., *Hosanna-Tabor*, 565 U.S. at 184 ("[T]he new Federal Government—unlike the English Crown" may not "interfer[e] with the freedom of religious groups to select their own [ministers]."); *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 ("[A]ny attempt by government to dictate or even to influence [internal religious] matters would constitute one of the central attributes of an establishment of religion."); *Milivojevich*, 426 U.S. at 711 ("'The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine . . . is unquestioned.'" (quoting *Watson*, 80 U.S. at 728–729)).

II. THE DECISION BELOW CREATES A SPLIT OF AUTHORITY.

The Court should additionally grant the petition because the decision below splits with decisions from other lower courts in several ways. First, it splits with the Fifth and Sixth Circuits, because those Circuits allow the right to religious autonomy to be asserted affirmatively, while the decision below cabins its use defensively. Second, the Fifth, Sixth, and D.C. Circuits have held (contrary to the decision below) that religious autonomy applies to bar unconstitutional action by the executive and legislative branches, not merely the judiciary. This patchwork means religious entities are afforded different protections based on where they

operate. Certiorari is warranted to unify the doctrine and confirm that religious autonomy may be asserted affirmatively against all government actors nationwide.

1. The decision conflicts with decisions from the Fourth and Fifth Circuits which (like this Court) have allowed the doctrine to apply affirmatively, rather than cabining its use in defense to litigation.

The Fourth Circuit did this in *Dixon* v. *Edwards*, when that court allowed the plaintiff, an Episcopalian Bishop, to assert the doctrine affirmatively in obtaining a declaratory judgment that the defendant was not the "Rector of St. John's Parish." 290 F.3d 699, 703–704 (4th Cir. 2002).

Dixon involved a dispute between the plaintiff bishop (the "Ecclesiastical Authority" over the Parish) and the defendant priest (whom the Parish's local Vestry had selected as its Rector) regarding who had authority over the Parish and its building. *Id.* at 703.

The district court granted the bishop a declaratory judgment. The Fourth Circuit affirmed based on the right to religious autonomy. Under the First Amendment, "it was for the Episcopal Church to determine whether [the plaintiff Bishop] was acting within the bounds of her role as Bishop." *Id.* at 718. Because the Episcopal Church had found "she did not act improperly," the First Amendment required the court to adhere to the determination of the church. See *id.*

The Fifth Circuit has also endorsed the affirmative use of the right. In *Northside Bible Church* v. *Goodson*, the Fifth Circuit affirmed a declaratory judgment for a church that a statute permitting a "sixty-five percent majority group of a local church congregation" to

withdraw local church property from the parent church if the parent church had changed its "social policies," was unconstitutional. 387 F.2d 534, 535 (5th Cir. 1967). The court explained that "[j]udicial tribunals, as arms of the government, must avoid interference with established church policies and government." *Id.* at 537. Because the statute "brazenly intrude[d] upon [a] very basic and traditional practice of The Methodist Church," it violated the First Amendment. *Id.* at 538; accord *McRaney* v. *North Am. Mission Bd. of S. Baptist Convention, Inc.*, 157 F.4th 627, 644 (5th Cir. 2025) (religious autonomy "rests on structural, constitutional limitations in the First Amendment"), petition for cert. pending, No. 25-807 (docketed Jan. 8, 2026).

The Ninth Circuit's assertion that the doctrine may be invoked only as a defense against government action and not affirmatively ignores conflicts with (at least) the Fourth and Fifth Circuits. This Court should grant certiorari to reverse and confirm that plaintiffs may invoke their religious autonomy in seeking affirmative relief.

2. The decision below creates another fracture on the question whether the right to religious autonomy applies to bar interference from executive and legislative action. The Ninth Circuit says no. The Fifth, Sixth, and D.C. Circuits say yes.

The decision below squarely holds that the right to religious autonomy *may not* be invoked to challenge executive or legislative action. Pet. App. 24a. But the Fifth Circuit's *Northside Bible Church*'s decision relied on the doctrine to invalidate a state statute. See 387 F.2d at 538.

The Sixth Circuit held in *Conlon* v. *InterVarsity Christian Fellowship/USA* that the right to religious autonomy constrains *all* branches of government. 777 F.3d 829 (6th Cir. 2015). There, the court noted that religious autonomy is a "structural [constitutional protection] that categorically prohibits federal and state governments"—not just courts—"from becoming involved in religious leadership disputes." *Id.* at 836.

The D.C. Circuit likewise applied the doctrine to constrain federal agencies. See *Duquesne Univ. of the Holy Spirit v. NLRB*, 947 F.3d 824 (D.C. Cir. 2020). In *Duquesne*, the NLRB attempted to assert jurisdiction over Duquesne University, which is Catholic, under the National Labor Relations Act. *Id.* at 826. In granting Duquesne's petition for review, the D.C. Circuit explained that the Religion Clauses' protections, including the church autonomy doctrine, preclude independent agencies from exercising jurisdiction over religious organizations. See *id.* at 827–828.

For their part, several district courts have also weighed in and, considering the precise question here, squarely disagree with the Ninth Circuit. See *InterVarsity Christian Fellowship/USA* v. *Board of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785, 802, 807, 839 (E.D. Mich. 2021) (religious "organizations can sue the government for violating" their right "to select their leaders and messengers"); *Darren Patterson Christian Acad.* v. *Roy*, 699 F. Supp. 3d 1163, 1184 (D. Colo. 2023) (state funding program prohibiting a plaintiff from hiring coreligionists "would likely violate Plaintiff's free exercise of religion, as protected by the ministerial exception").

III. THIS ISSUE IS IMPORTANT AND MERITS REVIEW.

The Court should grant review because the right to religious autonomy—which long predates the Constitution—is exceptionally important. If Oregon—or another state—repeats what has happened here, it will erode the First Amendment.

A. The History Of The Right To Religious Autonomy Predates The Constitution.

The First Amendment's guarantee of religious autonomy is the written embodiment of a right cherished by societies for millennia. This Court catalogued some of that history in *Hosanna-Tabor*. It is worth underscoring the history that informs the right to religious autonomy, which demonstrates the right's importance (and the need for this Court's review of the important question whether it applies in this case to prohibit Oregon's actions).

One of the earliest articulations of the right to religious autonomy came in the "Protocols of Milan," when Roman Emperors Constantine and Licinius propounded in 313 A.D. that "[n]o cult or religion will be impaired by us." Robert Louis Wilken, LIBERTY IN THE THINGS OF GOD: THE CHRISTIAN ORIGINS OF RELIGIOUS FREEDOM 23 (2019). With respect to then-nascent Christianity, the Roman Empire formally legalized the faith and recognized the corporate right of churches to the property "in which they had the habit of assembling." *Id.* More than a century later, Pope Gelasius I "took the unprecedented step of writing a letter directly to the [Roman] emperor instructing him on the limits of his authority in religious matters." *Id.* at 34.

In England, the scope of the right to religious autonomy continued to expand during the reign of the "Saxon kings of the seventh to the tenth centuries," where "civil courts categorically lacked jurisdiction over clergymen unless the bishop secularized them first." *McRaney*, 157 F.4th at 634 (citation modified). And William the Conqueror, in the late eleventh century, "stripped the civil courts of jurisdiction over 'any case which pertain[ed] to the rule of souls' and established new ecclesiastical courts with exclusive jurisdiction over matters of religious law and doctrine." *Id.*

Later, in the eleventh and twelfth centuries, the dueling powers of church and state tussled over the appointment of ecclesiastical leaders, until the question "who would have the authority to appoint Catholic bishops" was resolved by the German emperor "guarantee[ing] that bishops and abbots would be freely elected by the church alone." Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U.L. Rev. Colloquy 175, 179 (2011) (citation modified).

Then, in 1215, came the great charter and its foundational premise for much of modern liberty. In 1215, the very first clause of the Magna Carta proclaimed that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired" and particularly recognized the church's "freedom of elections," a right "thought to be of the greatest necessity and importance to the English church." *Hosanna-Tabor*, 565 U.S. at 182 (quoting J. Holt, Magna Carta App. IV, p. 317, cl. 1 (1965)).

Thus, over millennia, the right to religious autonomy took hold. But it expanded imperfectly. "During the

early settlement of the colonies in the seventeenth century, England suffered from chronic religious strife and intolerance." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1421 (1990). England "suppressed" "both Roman Catholicism and extreme Protestantism" such as Puritans and Baptists. *Id.* The "official persecution of Protestant dissenters" ended when Parliament enacted the Toleration Act of 1688. *Id.* at 1422.

Following the Toleration Act, and due in some measure to the writings of John Locke, the American colonies increasingly accepted the importance of religious autonomy. See Carl H. Esbeck, *Establishment Clause Limits on Governmental Interference with Religious Organizations*, 41 Wash. & Lee L. Rev. 347, 355 (1984). Locke argued that a church is "a free society of men who voluntarily come together to worship God" and "since the members of this society or church joined it freely and without coercion, . . . it follows that the right of making its laws must belong to the society itself." John Locke, A LETTER CONCERNING TOLERATION 5 (Jonathan Bennett ed. 2010) (1690).

America's founders understood the importance of protecting the autonomy of religious institutions, repeatedly refusing to involve the newly united states in internal religious strife. The Vatican in 1783 "proposed an agreement with [the Confederation] Congress to approve a Bishop-Apostolic for America since the new states were outside English authority." Berg, 106 Nw. U.L. Rev. at 181. Some opponents urged Congress "to reject the appointment on th[e] theologically neutral, 'secular' ground" that the "bishop would be French, not American." See *id.* But Congress took the

bolder step of responding that it had "no authority to permit or refuse the appointment," on any ground, and noting that "the Pope could appoint whomever he wished because the subject . . . being purely spiritual . . . is without the jurisdiction and powers of Congress." *Id.* (citation modified). This full-throated defense of religious autonomy appeared again in the text of the First Amendment.

The long and hard-fought history of the right to religious autonomy underscores its importance. Decisions, like the one below, that diminish that right jeopardize a central freedom that informs our Constitution. The issue is important and merits this Court's review.

B. Declining Review—And Foreclosing Relief In This Case—Would Threaten The First Amendment.

The Ninth Circuit erred in its holdings that right to religious autonomy cannot be asserted affirmatively and cannot be asserted against legislative and executive action. The implications of those decisions are also exceptionally important, because they foreclose relief for many potential First Amendment injuries.

The decision below works real substantive harm: "conditioning the availability of benefits" upon giving up autonomy over faith-based hiring "effectively penalizes the free exercise of religion." *Carson ex rel. O.C.* v. *Makin*, 596 U.S. 767, 780 (2022) (citation modified). Oregon's imposition of conditions on Youth 71Five in order for the group to qualify for grant funding "inevitably deters or discourages the exercise of First Amendment rights" by limiting public benefits available to religious organizations who prefer hiring

coreligionists. *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 464, 478 (2020) (citation omitted).

Worse, the decision also closes the federal courts to many claims for First Amendment injuries like the one suffered by Youth 71Five here. Government officials hostile to religion—or to particular religious sects—will have no trouble weaponizing this power to thwart religious autonomy by pressuring religious groups into hiring decisions the government favors—and real cases provide fodder for readily imaginable hypotheticals.

First, consider a religious school that, because of its faith commitments, hires only chaplains who share the school's religious beliefs. Under the church autonomy doctrine, it has the right to do so. See *Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 756–757. Now, imagine that a State excludes the school from receiving public scholarship funds under a general and neutrally applicable statute requiring all participating institutions to certify that they would not discriminate on the basis of sex in hiring decisions. Cf. *Darren Patterson Christian Acad.*, 699 F. Supp. 3d at 1169 (discussing such a program). Such a statute would clearly place an unconstitutional condition on the school's exercise of religious autonomy. See *Carson*, 596 U.S. at 780. But the Ninth Circuit's decision prevents the school from suing to enjoin the State's policy on religious autonomy grounds, since such a lawsuit would be an offensive challenge to a legislative act (not a defensive shield against judicial interference). Pet. App. 24a. Courts in the Ninth Circuit would be closed to a school seeking relief from a violation of its right to autonomy in selecting religious leaders.

Second, imagine the same school were subject to a state administrative proceeding that assessed a civil penalty for violating a general and neutrally applicable regulation prohibiting religious discrimination in employment. Cf. *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, 584 U.S. 617, 622 (2018) (describing an analogous regime for enforcing antidiscrimination laws). Again, the Ninth Circuit's decision would prevent the school from raising a religious autonomy challenge to such a proceeding, because a state administrative proceeding is executive, not "*judicial*" action. Pet. App. 24a (limiting applicability of religious autonomy to "defenses against . . . *plaintiffs'* invocation of *judicial* authority" (first emphasis added)).

Third, imagine that the State chose to remove the school's tax exemption under a neutral and generally applicable statute requiring all tax-exempt organizations to certify they will not discriminate on the basis of religion in any hiring decisions. Cf. *Catholic Charities Bureau, Inc.* v. *Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 241–242 (2025) (holding state tax exemption scheme violated First Amendment by preferring some religious denominations over others). Again, the State's law would raise a serious problem under the right to religious autonomy. But the Ninth Circuit's decision would preclude the school from *ever* seeking judicial review of the revocation of its tax-exempt status. Pre-enforcement review would be impossible because it would require asserting the school's religious autonomy against a State's *legislative* acts, not against the judiciary. Pet. App. 24a.

If the school waited to pay taxes under protest and then seek a refund from the State's taxing authority—

or if it refused to pay taxes and was subject to an administrative enforcement proceeding—it likely could not raise religious autonomy as a defense due to common State administrative law doctrines.[4] And if the school ultimately sought judicial review of the State agency's decision—whether in State or federal court—the Ninth Circuit's decision would foreclose the school's lawsuit as raising an affirmative assertion of religious autonomy against the State's executive branch. The result would be no pre-enforcement review and no post-enforcement review—in other words, no review or recourse at all.

The right to religious autonomy exists to protect against such "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. But the Ninth Circuit's rule will embolden state officials bent on depriving religious organizations, like Amici and those they represent, of their right to religious autonomy in hiring (and many contexts) while also foreclosing relief from that state action. The Constitution demands better.

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the decision below.

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[4] Many States' administrative procedure laws would prohibit the school from raising a religious autonomy defense. See, e.g., *Westwood P'ship* v. *Gogarty*, 103 S.W.3d 152, 161–162 (Mo. Ct. App. 2003) (holding that Revenue Commission lacked jurisdiction to review constitutionality of tax assessment); *Department of Revenue* v. *Young Am. Builders*, 330 So. 2d 864, 865 (Fla. Dist. Ct. App. 1976) (holding Department of Revenue could not adjudicate Due Process challenge to revenue law).

Respectfully submitted,

CHRISTIAN M. POLAND
BRYAN CAVE LEIGHTON PAISNER LLP
161 North Clark Street, Ste. 4300
Chicago, IL 60601

BARBARA A. SMITH*
SETH M. REID
KOLTEN C. ELLIS
BRYAN CAVE LEIGHTON PAISNER LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102
(314) 259-2367
barbara.smith@bclplaw.com

Counsel for Amici Curiae

*Counsel of Record

February 17, 2026