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 A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF MONTANA AND 12 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

As framed by Petitioners, the questions presented are:

1. Whether a religious organization can raise the First Amendment right to religious autonomy as an affirmative claim challenging legislative or executive action under 42 U.S.C. § 1983, like other constitutional right, or whether the doctrine may only be asserted as an affirmative defense after a suit has been filed, as the Ninth Circuit held here.

2. Whether a state violates the First Amendment by conditioning access to a public grant program on a religious organization waiving its right to employ coreligionists, including for ministerial positions.

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INTEREST OF *AMICI* STATES[1]

Amici are sovereign States of the Union. Their citizens have religious rights under the First Amendment that *amici* are obligated to protect. And as frequent participants — *see Ex Parte Young*, 209 U.S. 123 (1907); 42 U.S.C. § 1983 — in litigation attacking the actions of State officials, *amici* have a strong interest in clear, consistent rules for the presentation of First Amendment claims.

BACKGROUND AND PROCEEDINGS BELOW

Petitioner Youth 71Five Ministries ("71Five") is a Christian, youth-mentoring ministry in Medford, Oregon. While 71Five's various programs and ministries strive to meet participants' physical, mental, emotional, and social needs, the ministry's "primary purpose" is "to teach and share about the life of Jesus Christ" so that individuals "might have an opportunity of having a personal relationship" with Him. Like many religious organizations, 71Five requires all of its board members, employees, and volunteers to "subscribe and adhere without mental reservation" to a Statement of Faith and be actively involved in a local church.

For years, 71Five successfully applied for and received grants through Oregon's Youth Community Investment Grant Program, a grant program designed to support existing services for youth who are at risk of disengaging from school, work, and community. That changed in the 2023-2025 grant cycle. Three or four months after being notified it had

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[1] Pursuant to Supreme Court Rule 37.2, *Amici* timely notified counsel of record for the parties of their intent to file this brief.

been awarded grants but before any funds were received, an Oregon official unexpectedly emailed 71Five's Executive Director and told him that the ministry was being disqualified because of its practice of only hiring employees and working with volunteers who share its religious beliefs. That decision was apparently based on an anonymous report that pointed to 71Five's website.

After unsuccessfully attempting to resolve the dispute through amicable means, 71Five filed a verified complaint for declaratory and injunctive relief, and for damages. The complaint asserted "federal questions under the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983," and "original jurisdiction under 28 U.S.C. §§ 1331 and 1343." It then asserted four counts, each under the First Amendment: Free Exercise Clause - Exclusion from Otherwise Available Government Benefits (Count I), Religion Clauses - Church Autonomy and the Ministerial Exception (Count II), Free Exercise Clause - Not Neutral and Generally Applicable (Count III), and Free Speech Clause - Expressive Association (Count IV).

71Five sought a preliminary injunction, which the district court denied. *Youth 71Five Ministries v. Williams*, No. 1:24-cv-399, 2024 U.S. Dist. LEXIS 113695 (D. Or. June 26, 2024). Although Defendants had moved only to dismiss 71Five's request for damages, the district court then dismissed the entire complaint with prejudice on the basis of qualified immunity, including 71Five's claims for declaratory and injunctive relief. *Id.* at *23.

71Five timely appealed. A motions panel granted an injunction pending appeal. *Youth 71Five*

Ministries v. Williams, No. 24-4101, 2024 U.S. App. LEXIS 20409 (9th Cir. Aug. 8, 2024). The merits panel reached a contrary conclusion, and it affirmed-in-part the denial of a preliminary injunction. *Youth 71Five Ministries v. Williams*, 153 F.4th 704 (9th Cir. 2025). That opinion was subsequently amended. *Youth 71Five Ministries v. Williams*, No. 24-4101, 2025 U.S. App. LEXIS 31002 (9th Cir. Nov. 26, 2025). Although 71Five had identified two district court cases supporting its position, 2024 U.S. Dist. LEXIS 113695, at *14 n.2, the merits panel carefully faulted 71Five for having "identified no opinion from the Supreme Court, this Court, or another court of appeals suggesting that plaintiffs may assert ecclesiastical abstention or the ministerial exception as § 1983 claims," *Youth 71Five Ministries v. Williams*, 160 F.4th 964, 983 (9th Cir. 2025). The merits panel then concluded the district court did not err by "declin[ing] to address the merits of 71Five's argument" and treating ecclesiastical abstention and the ministerial exception as affirmative defenses that cannot be brought as standalone claims. 160 F.4th at 983-984. 71Five now petitions for a writ of certiorari on those issues.

Although not directly relevant to the issues on which certiorari is sought, the record includes evidence of the identities of other participants in the grant program, as well as judicially noticeable evidence—website printouts—that evidence racial discrimination by those participants.

SUMMARY OF ARGUMENT

The Ninth Circuit held the district court did not err by declining to review the merits of 71Five's religious

autonomy claims. The court of appeal reached that conclusion despite acknowledging that 71Five's claims are based on three of this Court's opinions, and despite 71Five having identified supporting district court precedent. By refusing to reach the merits merely based on a lack of sufficiently analogous appellate precedent, the Ninth Circuit elevated the likelihood of success standard to something akin to the standard for overcoming qualified immunity.

The only identifiable basis for the Ninth Circuit's opinion is that religious autonomy claims are generally treated as affirmative defenses. But affirmative defenses are properly the subject of declaratory judgments, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), and Section 1983 provides a cause of action for affirmative assertions of constitutional rights.

Moreover, the Ninth Circuit acknowledged that "a broad principle of religious autonomy" is grounded in the First Amendment and this Court's precedent. *Youth 71Five Ministries*, 160 F.4th at 983 (citing *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012); and *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 710 (1976)). The inquiry thus collapses to the purely legal question of the scope of those rights, as 71Five urges in its questions presented. Regardless of the procedural mechanism, a First Amendment claim must be subject to prompt, pre-enforcement judicial review. *See Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965). But the Ninth Circuit's opinion would leave religious organizations unable to exercise aspects of their

religious autonomy rights without risking civil or criminal liability. That outcome is contrary to decades of this Court's First Amendment jurisprudence.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit effectively departed from the standards governing preliminary injunctions by — yet again — requiring a "carbon copy" of this Court's religious liberty precedents.

Start with the foundational premise: federal courts are the primary forum for vindicating federal rights. That wasn't always true. "During most of the Nation's first century, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws." *Zwickler v. Koota*, 389 U.S. 241, 245 (1967). "But that policy was completely altered after the Civil War[.]" *Id.* at 246.

Congress, in the Civil Rights Act of 1871, subjected to suit "every person who, under color of any statute, ordinance, regulation, custom, or usage … subjects, or causes to be subjected, any citizen of the United States or other person … to the deprivation of any rights … secured by the Constitution and laws …," 42 U.S.C. § 1983; *see also* Act of April 20, 1871, 17 Stat. 13. Congress also gave the district courts "original jurisdiction" of actions "to redress the deprivation, under color of any State law ... of any right ... secured by the Constitution …." 28 U.S.C. § 1343(a)(3). Lest there be any doubt, Congress then enacted the Jurisdiction and Removal Act of March 3, 1875, which granted district courts jurisdiction over civil matters

"arising under the Constitution or laws of the United States." 28 U.S.C. § 1331. Federal district courts thus "became the primary and powerful reliances for vindicating every right given by the Constitution[.]" *Zwickler*, 389 U.S. at 247. And it's precisely those jurisdictional provisions that 71Five invoked.

71Five may not ultimately prevail. But the Ninth Circuit's affirming the district court's "declin[ing] to address the merits" of 71Five's claims based simply on the lack of binding appellate precedent — despite 71Five's claims being grounding in three of this Court's cases, and despite the presence of non-binding supporting precedent — is a significant departure from ordinary practice. In doing so, the Ninth effectively elevated the standard for a preliminary injunction to something akin to the standard for overcoming qualified immunity. *Cf. City of Tahlequah v. Bond*, 595 U.S. 9 (2021) (applying qualified immunity due to the lack of sufficiently analogous appellate precedent).

That was a fundamental error, and it wasn't isolated. Rather, it followed the Ninth Circuit's troubling pattern of "demanding nothing less than a 'carbon copy' of the specific facts" in this Court's religious liberty precedents. *Our Lady of Guadalupe Sch.*, 591 U.S. at 745 (quoting *Biel v. St. James Sch.*, 926 F.3d 1238, 1239 (9th Cir. 2019) (Nelson, J., dissenting from denial of rehearing en banc)).

II. The petition presents a pure legal question regarding the scope of a constitutional right.

A. Religious autonomy claims can properly be subject to a declaratory judgment, and that remains true even if they are ordinarily viewed as an affirmative defense.

Assuming *arguendo* the opinions below are correct in finding that religious autonomy is only an affirmative defense, 71Five's claims were still ripe for a declaratory judgment.

1. The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction … any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201; *see also* Act of June 14, 1934, Pub. L. 73-343, 48 Stat. 955.

Prior to that Act, analogous state provisions "had been employed … for the declaration of rights contested under a statute or municipal ordinance, where it was not possible or necessary to obtain an injunction." S. Rep. 73-1005, at 2 (1934). But in federal courts, in the absence of the declaratory judgment procedure, it was "often necessary … to violate or purport to violate a statute in order to obtain a judicial determination of its meaning or

validity." *Id.* at 2-3. The Declaratory Judgment Act eliminated that problem.

The Act did so by authorizing a judgment where adjudication "may not require the award of [injunctive] process or the payment of damages." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937). Indeed, the Act authorizes a declaratory judgment even when those forms of relief are unavailable. *See id.* The Act simply "allow[s] relief to be given by way of recognizing the plaintiff's right even though no immediate enforcement of it was asked." *Skelly Oil Co. v. Phillips Petrol. Co.*, 339 U.S. 667, 671-672 (1950). The critical requirement is that "[t]he dispute is definite and concrete, not hypothetical or abstract," and otherwise within the jurisdiction of the federal courts. *Aetna*, 300 U.S. at 242. The party who would ordinarily be a defendant may bring a declaratory action. "It is the nature of the controversy, not the method of its presentation or the particular party who presents it that is determinative." *Id.* at 244.

2. A declaratory judgment thus may be sought vis-à-vis an affirmative defense. In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), this Court held that a patentee was not required to break or terminate its license agreement "before seeking a declaratory judgment … that the underlying patent is invalid…." *Id.* at 137. It did so despite "patent invalidity [being] an affirmative defense to patent infringement, not a freestanding cause of action." *Id.* at 142 (Thomas, J., dissenting and citing 35 U.S.C. § 282(2)-(3)). Indeed, notwithstanding

patent invalidity being an affirmative defense, this Court has repeatedly explained that "[a] party seeking a declaratory judgment of invalidity presents a claim independent of the patentee's charge of infringement." *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 643 (2015) (quoting *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 96 (1993)).[2]

To be sure, "if, but for the availability of the declaratory judgment procedure, the federal claim would arise only as a defense to a state created action, jurisdiction is lacking." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 16 (1983) (quoting 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2767, pp. 744-745 (2d ed. 1983)). But that concern is answered by Section 1983, which "creates a cause of action where there has been injury, under color of state law, to the person or to the constitutional or federal statutory rights which emanate from or are guaranteed to the person." *Wilson v. Garcia*, 471 U.S. 261, 278 (1985); *see also Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (setting forth elements of cause of action). The inquiry thus collapses into the pure legal question of the scope of the religious autonomy right, as urged by 71Five in the questions presented.

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[2] Critically, even if religious autonomy grounds are viewed as affirmative defenses, those defenses would be 71Five's. That distinguishes *Calderon v. Ashmus*, 523 U.S. 740 (1998), where the Court held that a declaratory judgment cannot be sought "as to the validity of a defense the [declaratory judgment defendant] may, or may not, raise in a [different] proceeding," *id.* at 747.

3. This Court has repeatedly recognized the availability of a pre-enforcement declaratory judgment in First Amendment challenges. In *Baggett v. Bullitt*, 377 U.S. 360 (1964), for example, the plaintiffs sought a declaration that two oaths were unconstitutional, as well as an injunction against enforcement of the underlying statutes that required those oaths as a condition of public employment. This Court reversed a three-judge district court's holding that "adjudication was not proper in the absence of proceedings in the state courts which might resolve or avoid the constitutional issue." 377 U.S. at 366. Reaching the merits and finding the statutes unconstitutional, the Court noted "[t]he teacher who refused to salute the flag or advocated refusal because of religious beliefs might well be accused of breaching his promise." *Id.* at 371. "Those with a conscientious regard for what they solemnly swear or affirm … avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe." *Id.* at 372. "Free speech may not be so inhibited." *Id.* Numerous other cases are in accord. *E.g.*, *Steffel v. Thompson*, 415 U.S. 452 (1974). And, analogous to the immaterial question of whether the constitutional claim is viewed as free-standing or an affirmative defense, it doesn't matter "whether an attack is made on the constitutionality of the statute on its face or as applied." *Id.* at 475.

The availability of declaratory relief isn't limited to cases asserting violations of free speech. Just last term, the Court emphasized that "when a deprivation

of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit," and it did so in a Free Exercise case. *Mahmoud v. Taylor*, 606 U.S. 522, 559-560 (2025) (ultimately citing *Steffel*, 415 U.S. at 459). That case, like this one, notably involved a refusal to accommodate religious exceptions to a government policy, despite making such exceptions available on non-religious grounds.

The underlying principle in cases like *Baggett*, *Mahmoud*, and *Steffel* is ensuring First Amendment rights can be exercised to their fullest extent, without citizens needing to buffer their activities to avoid liability. One way the law does so is by facilitating prompt judicial review of laws, ordinances, etc., alleged to violate the First Amendment. Indeed, where a scheme does not provide for prompt judicial review of actions that may impinge on the First Amendment, that's an independent ground of unconstitutionality. *See Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965). The law requires such prompt review because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 14, 19 (2020) (granting injunction pending appeal based on likely violation of Free Exercise Clause).

4. That the question is presented in the context of a request for a preliminary injunction isn't an issue either. On its face, the Declaratory Judgment Act provides that "further necessary or proper relief based on a declaratory judgment or decree may be

granted … against any adverse party whose rights have been determined by such judgment." 28 U.S.C. § 2202. And federal courts have long-recognized that "[c]onsequential or executory relief may be demanded either in association with or as a supplement to declaratory relief." *Landers Frary & Clark v. Vischer Prods Co.*, 201 F.2d 319, 322 (7th Cir. 1953). Not surprisingly, the Courts of Appeal have repeatedly affirmed preliminary injunctions in declaratory judgment actions. *See City of Dallas v. Delta Airlines, Inc.*, 847 F.3d 279 (5th Cir. 2017) (affirming grant of preliminary junction in declaratory judgment action); *AMTRAK v. Penn. Pub. Util. Comm'n*, 342 F.3d 242, 257-259 (3d Cir. 2003) (holding that preliminary injunction "satisfies the prerequisites of the Declaratory Judgment Act"); *Cordis Corp. v. Medtronic, Inc.*, 835 F.2d 859 (Fed. Cir. 1987) (affirming grant of preliminary injunction pending resolution of declaratory judgment action); *Medtronic, Inc. v. Catalyst Research Corp.*, 664 F.2d 660 (8th Cir. 1981) (affirming grant of preliminary injunction in favor of plaintiff seeking a declaratory judgment). Preliminary relief being available in a declaratory judgment action, the inquiry remains collapsed into the pure legal question of the scope of the religious autonomy right, as urged by 71Five in the questions presented.

B. 71Five's religious autonomy claims can also be viewed as an ordinary affirmative claim for injunctive relief raising a pure legal question.

The simpler answer is to view 71Five as having sought a preliminary injunction on a constitutional claim pursuant to Section 1983. *Cf. Wooley v.*

Maynard, 430 U.S. 705, 711 (1977) ("Ordinarily… the practical effect of [injunctive and declaratory] relief will be virtually identical." (citation omitted)). But then, even more clearly, the inquiry collapses into the pure legal question of the scope of the religious autonomy right.

C. The Ninth Circuit's categorization of religious autonomy claims is a red herring.

At bottom, the district court's and the Ninth Circuit's reliance on religious autonomy claims most commonly being presented as an affirmative defense is a red herring. Even if commonly presented that way, religious autonomy claims have a basis in 71Five's constitutional rights and existing precedent. The Ninth Circuit acknowledged as much, pointing to three of this Court's cases as establishing a "broad principle of religious autonomy" under the First Amendment. 160 F.4th at 983 (citing *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012); and *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 710 (1976)). Again, the only question is the purely legal question of the scope of those rights.

This Court has made clear that claims of First Amendment violations must be subject to prompt, pre-enforcement judicial review. The Ninth Circuit's opinion below departed from that well-tread rule. *See Freedman*, 380 U.S. at 58-59. Religious organizations like 71Five cannot be left with the Hobson's choice of not exercising their religious rights or risking civil or

criminal liability down the road depending on whether they prevail on an uncertain affirmative defense.

CONCLUSION

The issues presented are squarely legal, and this case presents and excellent vehicle to clarify the scope of the right to religious autonomy. The petition should be granted.

Respectfully submitted,

February 17, 2026

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