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 United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* PROFESSORS STEPHANIE BARCLAY AND RICHARD W. GARNETT IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are Stephanie Barclay, Professor of Law at Georgetown Law School, and Richard W. Garnett, Paul J. Schierl/Fort Howard Corporation Professor of Law at the University of Notre Dame Law School. *Amici* are legal scholars whose research and writing focuses on religious liberty. *Amici* wish to apprise the Court of the history and precedent that underlie the church autonomy doctrine. They believe that this evidence favors the Petitioner.

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[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Only Petitioner was timely notified of the intent to file this brief under Rule 37, but Respondents have informed counsel for *amici* that Respondents do not object to the late notice.

SUMMARY OF THE ARGUMENT

The church autonomy doctrine 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) (cleaned up). Religious institutions—not civil courts—decide matters of religious doctrine. And religious institutions—not government bureaucrats—determine matters of church government, leadership, and discipline. Such protections are deeply rooted in our constitutional tradition and fundamental to our country's scheme of religious freedom. Constitutional text, history, and tradition confirm church autonomy's centrality to the Religion Clauses ratified by the Framers and passed down to Americans today.

The decision below radically curtailed this fundamental liberty. Under the Ninth Circuit's holding, if a religious institution like Youth 71Five Ministries wishes to participate in a public program open to all comers, the state may require the religious institution to employ applicants who reject its religious teachings and beliefs. That holding is incompatible with the church autonomy doctrine. This Court should clarify that secular authorities may not commandeer 71Five's religious doctrine and religious personnel decisions.

As 71Five has shown, its hiring decisions are based on a sincere religious belief that its staff should share and help advance 71Five's religious mission. Decisions about these kinds of internal religious matters are protected by the church autonomy doctrine as articulated by this Court in *NLRB v. Roman Catholic Bishop of Chicago*, 440 U.S. 490, 507

(1979); *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 182 (2012); and *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020).

Amici submit this brief to amplify why reversal of the Ninth Circuit is not only mandated by this Court's precedents, but also by the original understanding of the First Amendment, which has consistently guided this Court's adjudication of such disputes. *See, e.g.*, *Our Lady*, 591 U.S. at 747–48; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523–24 (2022). *Amici* also note that the ministerial status of 71Five's staff is irrelevant because, for 71Five, important aspects of employment decisions are religious and concern matters of internal faith, doctrine, and discipline.

This is not a hard case, but it is an important one. Unless protected, religious groups will be prevented from structuring and governing their communities in accordance with their beliefs and moral principles. The alternative would allow secular authorities to force secular values on religious institutions—inevitably leading to the kind of strife and conflict that the First Amendment was designed to prevent. The Framers knew (from experience) how destructive such existential contests become, and they therefore protected the freedom of religious groups to operate without government intrusion. A faithful application of the First Amendment requires reversal.

ARGUMENT

I. The church autonomy doctrine historically protected religious institutions from government interference.

The church autonomy doctrine enshrined in the First Amendment has long protected 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." *Hosanna-Tabor*, 565 U.S. at 186 (cleaned up). That doctrine must be interpreted by reference to history and tradition. *Id.* at 181–85; *Our Lady*, 591 U.S. at 748. Historical practices demonstrate that the church autonomy doctrine was designed to end the long and abusive pattern of government interference with religious institutions, including over matters of doctrine and personnel.

a. The history of government interference with religion.

The conceptual foundations for church autonomy are ancient. Paul warned the nascent Christian community in Corinth against appealing to secular magistrates to resolve disputes within the church. *1 Corinthians* 6:1–8. Still, for much of western history, the union—or at least the interdependence—of throne and altar was common. The Investiture Crisis of the 11th century marked a turning point in legal notions of a "freedom of the church." *See, e.g.*, Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 NW. U. L. REV. COLLOQUY 175, 179 (2011). The Investiture Crisis arose out of a disagreement between the Pope and the Holy Roman Emperor over who would select bishops. Only after some fifty years

of civil war in Germany did Emperor Henry V agree to "guarantee[] that bishops and abbots would be freely elected by the church alone." Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* 98 (1983). Yet the church's victory was in some ways more formal than actual, as monarchs often exercised de facto control over the election process and ecclesiastical matters more generally.

English kings similarly attempted to control the church. For example, when Pope Gregory VII insisted on his clergy's celibacy, William I (1028–87) saw the situation "from a more worldly point of view" and granted dispensations to the English priests. E.F. Churchill, *The Dispensing Power of the Crown in Ecclesiastical Affairs*, 38 L. Q. REV. 297, 298 (1922). And while William's successor, Henry I (1068–1135), eventually agreed to enforce the celibacy of the clergy, he too dispensed with the requirement for any offending priest willing to "pay the price of his protection." *Id.* Thus, as Florence of Worcester recounted, "all went home and the decrees stood for nought; all held their wives by the King's leave as they had done before." *Id.*

The English nobility correctly saw such royal intermeddling in church affairs as a threat to their own prerogatives. So, at Runnymede in 1215, the English barons demanded and the King accepted in the Magna Carta that "'the English church shall be free, and shall have its rights undiminished and its liberties unimpaired.'" *Hosanna-Tabor*, 565 U.S. at 182.

The question of who, exactly, was in charge of the church came to a head during the reign of Henry VIII. Henry's court officials failed to secure a papal

annulment of his marriage to Queen Catherine of Aragon so that the King could marry Anne Boleyn. Facing a politically fraught decision, Rome delayed its answer. Enraged, Henry took matters into his own hands. With the aid of Parliament and his ecclesial allies, Henry was declared supreme head of the English Church in 1534. *See* Act of Supremacy of 1534, 26 Hen. VIII, ch. 1; *see also* Act in Restraint of Annates of 1532, 25 Hen. VIII, ch. 20.

The English monarchy's blurring of civil and religious authority resulted in bloodshed. In the years after the Act of Supremacy, the major parties in the profound religious disagreements of the era each sought to wield civil power. Many of England's leading statesmen and clergy met violent ends at the hands of royal executioners. Political control of spiritual affairs eventually contributed to the outbreak of the English Civil War in 1642 and the trial and execution of Charles I in 1649. After the restoration of the monarchy in 1660, Charles II's government ordered all ministers to pledge their allegiance or face charges of sedition and removal from their positions. Similarly, teachers of many stripes "were required to 'conform[] to the Liturgy of the Church of England' and not 'to endeavour any change or alteration' of the church." *Our Lady*, 591 U.S. at 748 (quoting Act of Uniformity of 1662, 14 Cha. II, ch. 4); *see also* Corporation Act of 1661, 13 Cha. II. St. 2, ch. 1 (requiring communion in the Church of England for those in elected office); Test Act of 1673, 25 Cha. II, ch. 2 (requiring all government officers to take oaths rejecting the doctrine of transubstantiation).

The effects were profound. Following the restoration, England imprisoned, exiled, or otherwise suppressed thousands of Catholics and Protestant non-conformists, including Baptist minister John

Bunyan, who wrote Pilgrim's Progress while in prison for preaching without a license.

These coercive policies led to calls for religious tolerance. Most famously, John Locke argued that it was "necessary" to "distinguish exactly the Business of Civil Government from that of Religion." John Locke, *A Letter Concerning Toleration* 12 (Goldie ed. 2010) (1690). Failure to recognize the distinction between civil and religious authority, he warned, would result in endless "controversies." *Id.* Locke's solution limited government to the function of "preserving and advancing" life, liberty, and property, while allowing the Church to attend to "the Salvation of . . . souls." *Id.* at 13, 15. Members of a church would join it "free[ly]" and, therefore, "the Right of making its Laws" must "belong to" the church itself. *Id.* at 16.

Such arguments gradually altered the course of English law. As part of the Glorious Revolution, England passed the Act of Toleration of 1689 (1 Will. & Mary, ch. 18), granting non-conforming Protestants limited freedom of worship if they swore allegiance to the Crown. But Protestant nonconformists were still prohibited from holding public office, and the statute completely excluded Roman Catholics and non-trinitarians from its protections. *See* Michael D. Breidenbach, *Our Dear-Bought Liberty: Catholics and Religious Toleration in Early America* (2021). Many who disagreed with the state on matters of religion continued to face state interference with church government and other forms of persecution and suppression. *See, e.g.*, 4 William Blackstone, *Commentaries on the Laws of England* 55 (8th ed. 1778). The Crown still appointed the leadership of the established Church of England, and the rank-and-file clergy were still appointed under government authority.

Beginning with the Pilgrims' departure for New England in 1620, many religious dissenters in Great Britain chose to leave rather than endure the Crown's interference. In the ensuing decades, thousands of "Puritans fled to New England, where they hoped to elect their own ministers and establish their own modes of worship." *Hosanna-Tabor*, 565 U.S. at 182. "William Penn, the Quaker proprietor of what would eventually become Pennsylvania and Delaware, also sought independence from the Church of England," and "[t]he charter creating the province of Pennsylvania [in 1681] contained no clause establishing a religion." *Id.* at 183. Maryland, similarly, was founded as a haven for Roman Catholics from the discriminatory policies of the Crown. Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 36 (2023).

Still, many colonial governments continued to exercise varying degrees of "control over doctrine, governance, and personnel of the church." *Id.* at 18. Colonists were often subject to laws giving government authorities "the power to appoint and discipline clergy" and "laws governing doctrine." *Id.* at 19. These "principal means of government control" resulted in "protest[s] against government control of religion," including "attack[s] on the establishment . . . from within the church." *Id.* at 19–20.

b. The First Amendment was adopted to protect church autonomy.

It was "against this background that the First Amendment was adopted." *Our Lady*, 591 U.S. at 748. Establishment had engendered conflict, and "the founding generation sought to prevent a repetition of

these practices" by setting a firm boundary: the First Amendment's categorical prohibition on laws "respecting an establishment of religion or prohibiting the free exercise thereof." *Id.* at 746. The First Amendment rejected "government control over doctrine, governance, and personnel" of any religious institution. Chapman & McConnell, *supra*, 187. Gradually, individual states adopted and extended the logic of the First Amendment, dismantling their religious establishments. *Id.*; *see Disestablishment and Religious Dissent: Church-State Relations in the New American States* 1776–1833 (Carl H. Esbeck & Jonathan Den Hartog eds., 2019).

The Framers understood this prohibition on government power over religious institutions as a safeguard against the abuses that state control enabled. Disestablishment sought to "distinguish exactly the Business of Civil Government from that of Religion." John Locke, *A Letter Concerning Toleration* 12 (Goldie ed. 2010) (1690). Perhaps most famously, James Madison skewered the contention that a "Civil Magistrate is a competent Judge of Religious truth" as "an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world." James Madison, *Memorial and Remonstrance Against Religious Assessments*, in 8 *The Papers of James Madison* 295, 301 (Rutland et al. eds., 1973).

While the theological and political reasons for rejecting government control over religious institutions varied, the Framers broadly maintained that (1) civil government lacked authority over religious institutional matters (a non-establishment principle), and (2) religious institutions were entitled to freedom from interference by civil government in their internal ecclesiastical matters (a free-exercise principle). *See, e.g.*, Chapman & McConnell, *supra*,

27–32, 42–49 (tracing the arguments over establishments); Lael D. Weinberger, *The Origins of Church Autonomy: Religious Liberty After Disestablishment*, https://tinyurl.com/3k5yhrza, at 12–32 (2024); Branton Nestor, *Judicial Power and Church Autonomy*, 100 NOTRE DAME L. REV. --- (2025), https://tinyurl.com/yc8pwm4r.

The Framers' novel step of imposing a structural, constitutional restraint on government largely succeeded in limiting government interference with religion. This was reflected by early "episode[s]" in federal constitutional practice. *Hosanna-Tabor*, 565 U.S. at 184–85.

For example, when the first Roman Catholic Bishop in the United States, John Carroll, asked then-Secretary of State Madison for advice on who should be appointed to head the Catholic Church in New Orleans, Madison refused, responding that he should not take part in the decision because the "selection of [religious] functionaries . . . is entirely ecclesiastical." Letter from James Madison to John Carroll (Nov. 20, 1806), in *The Records of the Am. Catholic Historical Soc'y. of Phila.*, 20:63, at 63–64 (1909); *see also* Michael W. McConnell, *Reflections on Hosanna-Tabor*, 35 HARV. J. L. & PUB. POL'Y 821, 830 (2012). Madison was consistent in his views on the freedom of the church as President—as the Supreme Court has noted, he refused to allow a secular charter to strip an institution of its religious autonomy. *See Hosanna-Tabor*, 565 U.S. at 184–85.

As President, Thomas Jefferson advanced similar religious autonomy principles. For example, when he was informed in 1804 that local authorities had barred entry into a Catholic church in the Orleans Territory in response to a dispute over

control of the parish, he complained that this "was an error. On our principles all church-discipline is voluntary; and never to be enforced by the public authority." Kevin Pybas, *Disestablishment in the Louisiana and Missouri Territories, in Disestablishment and Religious Dissent: Church-State Relations in the New American States 1776–1833*, at 273, 281–82.

Jefferson penned another letter a few days later in response to a missive from Ursuline Nuns who ran an orphanage and Catholic school in New Orleans. Jefferson assured the nuns that the Louisiana Purchase would not undermine their "broad right of self-governance and religious liberty," despite Catholic France ceding control over the territory to the non-Catholic United States. *Id.* at 281; *see also* 1 Anson Phelps Stokes, *Church and State in the United States* 678 (1950). Jefferson explained that "[t]he principles of the constitution . . . are a sure guaranty to you that [your property and rights] will be preserved to you sacred and inviolate, and that your institution will be permitted to govern itself according to [its] own voluntary rules, without interference from the civil authority." Pybas, *supra*, at 281. Like Madison, "Jefferson also saw church-state separation as guaranteeing the autonomy, independence, and freedom of religious organizations—not just churches but religious schools as well." Berg, *supra*, at 182–83.

c. Civil courts during and after the Founding era enforced church autonomy.

"Given this understanding of the Religion Clauses—and the absence of government employment regulation generally—it was some time before

questions about government interference with a church's ability to select its own ministers" and to manage its "ecclesiastical" affairs "came before the courts." *Hosanna-Tabor*, 565 U.S. at 185. When such cases arose, civil courts broadly held 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.* (quoting *Watson v. Jones*, 13 Wall. 679, 727 (1872)). Such decisions "'radiate[d] . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation.'" *Id.* (cleaned up).

The church autonomy doctrine historically protected 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." *Id.* at 186 (cleaned up); *see also Watson*, 13 Wall. at 727 (recognizing ecclesial dominance over "questions of discipline, or of faith, or ecclesiastical rule, custom, or law"). Over religious questions, civil courts could "exercise no jurisdiction." *Watson*, 13 Wall. at 733.

First, the church autonomy doctrine shielded questions of religious doctrine from civil courts. These included (i) what theological doctrine to embrace, (ii) what religious practices to inculcate, and (iii) what theological and moral standard to require of church leaders and members. *See, e.g.*, Weinberger, *supra*, at 23–32; Nestor, *Church Autonomy*, *supra*, at 15–32. When a religious institution authoritatively interpreted religious doctrine, the civil court could not exercise judicial power to review or reverse that religious decision—instead, such a religious determination was "final" and "binding" on civil

courts. *Watson*, 13 Wall. at 727; *see also, e.g.*, *Chase v. Cheney*, 58 Ill. 509, 535–38 (Ill. 1871) (questions of "ecclesiastical cognizance"); Nestor, *Church Autonomy*, *supra*, at 17–32 (collecting cases).

Second, the church autonomy doctrine also shielded questions of ecclesiastical governance and discipline from civil courts. Such protection included the church's authority (i) to select what type of church government to adopt and what religious positions to create, (ii) to determine who would lead and serve the church, (iii) to decide who would be part of the religious institution, and (iv) to take necessary actions—including firing and expelling—church leaders and members in order to safeguard the faith and mission of the religious institution. *See, e.g.*, Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373 (1981); Weinberger, *Origins of Church Autonomy*, *supra*, at 23–32; Nestor, *Church Autonomy*, *supra*, at 15–32. When a religious institution resolved questions of "church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them," the civil court could "exercise no jurisdiction" to review or reverse the ecclesiastical decision. *Watson*, 13 Wall. at 733; *see also Shannon v. Frost*, 42 Ky. 253, 258–62 (Ky. 1842) (ecclesiastical "supervision or control"); *see also*, *e.g.*, Nestor, *Church Autonomy*, *supra*, at 17–32 (collecting cases).

The church autonomy doctrine historically provided such protection for religious institutions to protect free-exercise and non-establishment principles. *Hosanna-Tabor*, 565 U.S. at 184; *see also*, *e.g.*, Weinberger, *Origins of Church Autonomy*, *supra*, at 15–19; Nestor, *Church Autonomy*, *supra*, at 17–32.

Such principles are threatened where, for example, a lawsuit seeks to interfere with a religious institution's determination of who should advance its religious mission.

The church autonomy doctrine reflected free-exercise principles—protecting the freedom of religious institutions from civil courts. Early courts maintained that the church autonomy doctrine "secured religious liberty from the invasion of the civil authority," and that civil courts could "exercise no jurisdiction" over such ecclesiastical matters lest they violate the "full and free right" of religious institutions. *Watson*, 13 Wall. at 728, 730, 733; *see also*, *e.g.*, Chase, 58 Ill. at 535–38 ("freedom of religious profession and worship"); *Shannon*, 42 Ky. at 258–59 ("religious liberty"). Such free-exercise principles—a deep protection for religious institutions—were one foundation for church autonomy in early American practice. *See*, *e.g.*, Weinberger, *Origins of Church Autonomy*, *supra*, at 15–19; Nestor, *Church Autonomy*, *supra*, at 17–32 (collecting cases).

The church autonomy doctrine also reflected non-establishment principles—keeping civil courts from appointing religious personnel or determining religious doctrine. Early courts often framed such non-establishment concerns in terms of both civil court competence and civil court authority. And civil courts broadly agreed that over matters of "strictly and purely ecclesiastical character"—matters that "concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them"—the civil courts "exercise[d] no jurisdiction." *Watson*, 13 Wall. at 733; *see also*, *e.g.*, *State v. Farris*, 45 Mo. 183, 197–201 (Mo. 1869);

German Reformed Church v. Commonwealth, 3 Pa. 282, 289–91 (Pa. 1846). Such non-establishment principles—a structural constraint on civil court power—were another basis for the church autonomy doctrine. *See, e.g.*, Weinberger, *Origins of Church Autonomy*, *supra*, at 15–19; Nestor, *Church Autonomy*, *supra*, at 17–32 (collecting cases); *see also Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024) (noting that church autonomy "operates structurally . . . to categorically prohibit[] federal and state governments from becoming involved in religious leadership disputes." (quotation omitted)).

* * *

The church autonomy doctrine remedied the long and abusive pattern of government control over religious institutions. It provides an important protection for a religious organization's autonomy in decisions about "theological controversy, church discipline, ecclesiastical government, [and] the conformity of members" to required standards, free from state interference. *Watson*, 13 Wall. at 733.

II. The church autonomy doctrine prohibits government intrusion into 71Five's policy to hire coreligionists.

This dispute concerns whether Oregon can bar a religious institution from a public program because of the religious institution's religiously motivated employment criteria. Oregon's policy violates religious institutions' right to govern their internal affairs. The church autonomy doctrine defends religious institutions from such secular interference.

a. The church autonomy doctrine extends to internal affairs beyond ministerial status.

Church autonomy cases establish that the doctrine broadly safeguards religious institutions' right to govern their own internal affairs whenever their actions are "based on religious doctrine." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 656–60, 658 n.2 (10th Cir. 2002); *see also Ammons v. N. Pac. Union Conf. of Seventh-Day Adventist*, 139 F.3d 903 (9th Cir. 1998). A "long line of Supreme Court cases . . . affirm the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 462 (D.C. Cir. 1996) (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)); *see also Billard*, 101 F.4th at 332 (First Amendment protected Catholic school's decision to fire a lay teacher whose "duties included conforming his instruction to Christian thought" where the school "considered it 'vital' to its religious mission that its lay teachers bring a Catholic perspective to bear" on both secular and religious topics). The church autonomy doctrine therefore protects decisions of religious organizations that are based on religious grounds, whether or not any affected employees are ministers.

The "ministerial exception" is one application of "the general principle of church autonomy," *Our Lady*, 591 U.S. at 746, albeit one of the most heavily litigated areas of church autonomy, *see, e.g.*, Jason J. Muehlhoff, *A Ministerial Exception For All Seasons*, 45 HARV. J. L. & PUB. POL'Y 465, 467 (2022). The ministerial exception rests on protecting "independence in matters of faith and doctrine and in

closely linked matters of internal government." *Our Lady*, 591 U.S. at 747 (emphasis added). This includes "internal management decisions that are essential to the institution's central mission." *Id.* at 746. What is special about ministers is that decisions concerning them are protected even when the decision is not based on religious grounds. State interference "would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion." *Id.*

But the church autonomy doctrine's "broad" protections extend beyond the ministerial exception. *Our Lady*, 591 U.S. at 747. That doctrine encompasses matters such as "fundamental beliefs (e.g., doctrine, dogma, polity, governance, and canon law), core ministry (matters of worship, ritual, liturgy, counseling, confession, teaching, and humanitarian care), and core administrative functions (the selection, supervision, and discipline of personnel, church membership decisions, administration of property, and control of finances)." W. Cole Durham, Jr., *Religious Autonomy at the Crossroads, in Law, Religion, and Freedom: Conceptualizing a Common Right* 265–67 (W. Cole Durham, Jr. et al., eds., 2021); *see also Our Lady*, 591 U.S. at 747.

Thus, even a "valid and neutral" employment law may not "interfere[] with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. What matters is whether the religious institution is taking an "ecclesiastical" action or a "purely secular" one. *Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997) (citations omitted); *see also Bryce*, 289 F.3d at 657; *Catholic University*, 83 F.3d at 466. A dispute "rooted in religious belief," *Bryce*, 289 F.3d at 657, is

by definition not "purely secular." If the action is "ecclesiastical," the church autonomy doctrine bars state interference.

To be sure, church autonomy is not a magic wand that religious institutions can wave to avoid any law they don't like. For example, lower courts sometimes allow employment discrimination claims against religious institutions when those claims are "more similar to a negligence claim than a typical Title VII employment discrimination claim." *Werft v. Desert Sw. Ann. Conf. of United Methodist Church*, 377 F.3d 1099, 1101–03 (9th Cir. 2004). On the other hand, courts disallow claims that "would require a civil court to inquire into religious justifications for personnel" and other "decisions." *Id.*; *accord Rayburn v. Gen'l Conf. of Seventh-Day Adventists*, 772 F.2d 1126, 1171 (4th Cir. 1985) ("employment decisions may be subject to Title VII scrutiny" only "where the decision does not involve the church's spiritual functions" (emphasis added)). The distinction between what falls under the church autonomy doctrine and what doesn't is sometimes debatable for non-ministers. *See* Richard W. Garnett, *'The Freedom of the Church': (Towards) an Exposition, Translation, and Defense*, 21 J. CONTEMP. LEGAL ISSUES 33, 50 (2013); Lael Weinberger, *The Limits of Church Autonomy*, 98 NOTRE DAME L. REV. 1253 (2023).

Yet in *Our Lady*, this Court left no doubt that the church autonomy doctrine broadly protects "internal management decisions that are essential to the institution's central mission." 591 U.S. at 746. This includes, but is not limited to, "the selection of the individuals who play certain key roles," such as lay employees who "serve[] as a messenger" of religious organizations, perform duties "at the core of the mission" of the organization, lead prayer, and

whose "employment agreements and [employee] handbooks specif[y] in no uncertain terms that they [are] expected to help" carry out the organization's religious mission. *Id.* at 746, 753–54, 756–60; *see also id.* at 762 n.1 (Thomas, J., concurring) (church autonomy includes "laity" who have been "entrusted with carrying out the religious mission of the organization"); *cf. Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 940 (7th Cir. 2022) (guidance counselor was a minister because she participated in students' spiritual formation, led public prayer, and her "employment agreements" required her "to carry out [the school's] religious mission").

Even in the past year, jurists on this Court and elsewhere have continued to articulate the broad contours of the right protected by the church autonomy doctrine. *See, e.g.*, *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 255 (2025) (Thomas, J., concurring) ("The First Amendment's guarantee of church autonomy gives religious institutions the right to define their internal governance structures without state interference."); *Union Gospel Mission of Yakima Washington v. Brown*, 162 F.4th 1190, 1197 (9th Cir. 2026) (acknowledging that a religious organization "may decline to hire as non-ministerial employees those who do not share its religious beliefs"); *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 636 (5th Cir. 2025) (listing "areas where church autonomy has barred judicial interference," including but not limited to the ministerial exception, "the meaning of religious beliefs and doctrines," "the determination of religious polity, such as membership, matters of discipline and good standing, and the identification of the 'true church' amidst

internecine disputes," and "internal church communications regarding any of the aforementioned activities"); *O'Connell v. United States Conf. of Cath. Bishops*, 2025 WL 3082728, at *8 (D.C. Cir. Nov. 4, 2025) (Rao, J., dissenting) ("Decisions about how to raise and spend religious donations are inextricably tied up with a church's right to shape its own faith and mission and internal governance, so the church autonomy defense must protect these activities." (quotation omitted)).

Enforcing certain religious standards among employees, regardless of formal ministerial status, is often integral to a religious institution's ability to define its doctrines and moral standards and to communicate those beliefs to its members and next generation. This Court made the point clear in *NLRB v. Catholic Bishop of Chicago*, shielding religious schools from government interference with managing their lay teachers. 440 U.S. 490 (1979). In that case, unions filed petitions with the National Labor Relations Board ("NLRB") seeking to represent only the lay teachers employed by a group of schools operated by two Catholic corporations. *Id.* at 493. The church schools objected to the unions' petitions, arguing in relevant part that the First Amendment precluded NLRB's jurisdiction over these employees. *Id.* After the Board granted the unions' petitions, the church schools sued.

This Court observed that if the National Labor Relations Act granted NLRB jurisdiction over church schools, it would be forced to decide "serious First Amendment questions" about NLRB's jurisdiction over lay teachers employed by these schools. *Id.* at 504. Even though the unions sought to organize only lay teachers, the Board's inquiries would "implicate sensitive issues that open the door to conflicts

between clergy-administrators" and government. *Id.* at 503. Because religious schools, by their very nature, involve substantial religious activity and purpose," *id.* at 503 (quotation omitted), the Board would have to decide whether the "challenged actions were mandated by [schools'] religious creeds," "involv[ing] inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission," *id.* at 502.

Other federal courts recognize the constitutional protection afforded to a church's management of its employees, regardless of their formal ministerial status. For example, in *Bryce v. Episcopal Church*, a female youth minister who participated in a civil commitment ceremony with another woman sued her church under Title VII, alleging that church members later made offensive remarks at various church meetings and in church documents. 289 F.3d at 657–58. The court bypassed the specific ministerial question, holding that the church's actions were protected by the general principle of autonomy over "church governance and doctrine protected by the First Amendment." *Id.* at 658. The court "[found] this inquiry [into the ministerial exception] unnecessary . . . because Bryce's claims are based solely on communications that are protected by the First Amendment under the broader church autonomy doctrine." *Id.* at 658 n.2. The court explained that objections to religious organizations' "personnel decision[s]" are constitutionally protected when "the alleged misconduct is rooted in 'religious belief.'" *Id.* at 657 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)).

Even a recent case from the same circuit as the decision below acknowledges the protections of the church autonomy doctrine. After a decision of the

Washington Supreme Court interpreted state anti-discrimination law to provide a religious carveout for only ministers, a religious nonprofit sued to vindicate its rights to solely employ coreligionists. *Union Gospel Mission*, 162 F.4th at 1198–99. The Ninth Circuit concluded that the nonprofit "may decline to hire as non-ministerial employees those who do not share its religious beliefs." *Id.* at 1197.

b. 71Five's religiously motivated employment decisions are protected.

By contrast, the Ninth Circuit erred twice in this case. First, it wrongly refused to allow 71Five to vindicate its right to autonomy under Section 1983. Second, it scrutinized 71Five's First Amendment rights by determining whether Oregon's law was neutral and generally applicable. *Amici* wish to emphasize the gravity of the second error.

This Court's precedent on church autonomy has already rejected the idea that "valid and neutral" employment discrimination laws trump "internal church decision[s] that affect[] the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190 (rejecting application of neutral employment law to church decision-making); *Our Lady*, 591 U.S. at 736–38 (same).

This Court should explicitly recognize the appropriate place for the analysis of "neutral principles." When this Court has used this term in the past, it has done so to protect religious autonomy, not undermine it. This Court has invoked neutral principles in disputes over church land and property use, where it views "neutral principles" as working "to protect religious autonomy" by "assuring that secular courts would intervene in religious affairs only when

the religious community itself had expressly stated in terms accessible to a secular court how a particular controversy should be resolved." W. Cole Durham & Robert Smith, 1 Religious Orgs. & the Law § 5:16 (2017); *see also Jones v. Wolf*, 443 U.S. 595 (1979) (cautioning that civil courts still "must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body"). But the "'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986).

Thus, the First Amendment protects 71Five's practices even if Oregon's law is neutral and generally applicable. As established above, the "principles of the First Amendment" carefully protect "religious freedom." *Hosanna-Tabor*, 565 U.S. at 187. And that freedom protects church authority over "internal management decisions that are essential to the institution's central mission." *Our Lady*, 591 U.S. at 746; *see also, e.g.*, Weinberger, *Origins of Church Autonomy*, *supra*, at 15–19; Nestor, *Church Autonomy*, *supra*, at 17–32; Athanasius G. Sirilla, *The "Nonministerial" Exception*, 90 NOTRE DAME L. REV. 393, 406 (2023). This case presents one example of such an internal management decision: a youth ministry's policy requiring staff to adhere to its religious standards. As 71Five argues, its ability to pursue its religious mission would be degraded if Oregon pressures 71Five to sacrifice that policy.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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